

Report of the

**EXPERT CONSULTATION ON FISHING VESSELS OPERATING
UNDER OPEN REGISTRIES AND THEIR IMPACT ON ILLEGAL,
UNREPORTED AND UNREGULATED FISHING**

Miami, Florida, United States of America, 23–25 September 2003



Printed on ecological paper

Copies of FAO publications can be requested from:
Sales and Marketing Group
Information Division
FAO
Viale delle Terme di Caracalla
00100 Rome, Italy
E-mail: publications-sales@fao.org
Fax: (+39) 06 57053360

Report of the

EXPERT CONSULTATION ON FISHING VESSELS OPERATING UNDER OPEN REGISTRIES
AND THEIR IMPACT ON ILLEGAL, UNREPORTED AND UNREGULATED FISHING

Miami, Florida, United States of America, 23–25 September 2003

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
Rome, 2004

This One



AJSS-H2B-XQR8

The designations employed and the presentation of material in this information product do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations concerning the legal or development status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

ISBN 92-5-105098-8

All rights reserved. Reproduction and dissemination of material in this information product for educational or other non-commercial purposes are authorized without any prior written permission from the copyright holders provided the source is fully acknowledged. Reproduction of material in this information product for resale or other commercial purposes is prohibited without written permission of the copyright holders. Applications for such permission should be addressed to the Chief, Publishing Management Service, Information Division, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy or by e-mail to copyright@fao.org

© FAO 2004

PREPARATION OF THIS DOCUMENT

This document contains the report of the Expert Consultation on Fishing Vessels Operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing, which was held at the Southeast Fisheries Science Center (SEFSC), National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA) in Miami, Florida, United States of America, from 23 to 25 September 2003. The Expert Consultation was convened by the Director-General of the Food and Agriculture Organization of the United Nations (FAO) with the support of the FAO Fisheries Department's FishCode Programme ("Interregional Programme of Assistance to Developing Countries for the Implementation of the Code of Conduct for Responsible Fisheries"). Major funding for the Expert Consultation and report preparation was provided through FishCode component projects GCP/INT/849/USA ("Support for the Implementation of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing"), with Trust Fund support from the Government of the United States of America, and GCP/INT/823/JPN ("Responsible Fisheries for Small Island Developing States"), with Trust Fund support from the Government of Japan.

The collaboration of Dr Nancy Thompson (Director) and her colleagues at the SEFSC in arranging for the Expert Consultation venue and logistics is gratefully acknowledged. Thanks are due to Ms Tania Abdurizak (FIPD), Ms Marianne Guyonnet (FIPL), Ms Jenny Thorsell (FIPD), Ms Ulrika Westerberg (FIPD) and Ms Sophia Howard (SEFSC, Miami) for administrative support throughout the planning and implementation of the Consultation. The assistance of Ms Françoise Schatto (FIDI) and FAO/FishCode Consultants Ms Judith Swan, Ms Sophia Gazza, Ms Alacoque Martin and Mr A.F. Medina Pizalli with final publication preparations is also acknowledged with thanks.

This document is issued in English and Spanish, the languages in which the Expert Consultation was conducted.

David Douman
Senior Fishery Liaison Officer
Fishery Policy and Planning Division
FAO Fisheries Department, Rome

J. Eric Reynolds
Programme Coordinator, FishCode
Fishery Policy and Planning Division
FAO Fisheries Department, Rome
www.fao.org/fi/fishcode

Distribution:

Participants in the Consultation
Interested nations and international organizations
FAO Fisheries Department
Fishery Officers in FAO Regional Offices

FAO.

Report of the Expert Consultation on Fishing Vessels Operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing. Miami, Florida, United States of America, 23 – 25 September 2003.

FAO Fisheries Report. No 722. Rome, FAO, 2004. 168p.

ABSTRACT

This document contains the report of the Expert Consultation on Fishing Vessels Operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing that was held at the Southeast Fisheries Science Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration in Miami, Florida, United States of America, from 23 to 25 September 2003. The Expert Consultation was convened by the Director-General of FAO with a view to facilitating implementation of the 2001 FAO International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). Experts for this Consultation were selected because of their experience with open registries and in the field of fisheries.

The Experts focused on the effects of IUU fishing on global fishery resources and on lessons that might be learned from the experiences of flag States that have already implemented tighter control over the activities of their fishing vessels. Background papers presented to the Consultation covered topics including: a global assessment of the extent of IUU fishing; fishing vessels operating under open registries and the exercise of flag State responsibility; standards relating to flag State responsibility over fishing vessels contained in recent international instruments; and the International Network for the Cooperation and Coordination of Fisheries-related Monitoring, Control and Surveillance Activities (International MCS Network). Three case study presentations were also made by Experts from selected open registry countries (Cook Islands, Cyprus and Panama).

A round table discussion following the presentations led to the adoption of a number of recommendations for more effective application of flag State control over fishing vessels, particularly those operating under open registries, as a means to reduce the incidence of IUU fishing. These recommendations identified measures to be adopted by all States, flag States, coastal States and port States, as well as for assistance to developing States.

Results of the Expert Consultation are intended to provide inputs for a Technical Consultation on IUU fishing, fleet capacity and subsidies that is planned for mid-2004, in accordance with a decision of the twenty-fifth session of the Committee on Fisheries (COFI) in February 2003.

CONTENTS

Acronyms and abbreviations.....	vii
Acronyms for regional fishery bodies and arrangements.....	viii
OPENING OF THE SESSION.....	1
SELECTION OF OFFICERS.....	1
ADOPTION OF THE AGENDA.....	2
OVERVIEW OF IUU FISHING ISSUES AND FLAG STATE RESPONSIBILITY.....	2
FISHING VESSELS OPERATING UNDER OPEN REGISTRIES AND THE EXERCISE OF FLAG STATE RESPONSIBILITIES.....	3
PRESENTATION OF CASE STUDIES.....	5
Cook Islands.....	5
Cyprus.....	6
Panama.....	8
INTERNATIONAL MONITORING, CONTROL AND SURVEILLANCE NETWORK.....	9
ROUND TABLE DISCUSSIONS ON THE DEVELOPMENT OF OPTIONS AND RECOMMENDATIONS.....	10
All States.....	10
Flag States.....	11
Coastal States.....	12
Port States.....	13
Assistance to Developing States.....	14
OTHER MATTERS.....	14
ADOPTION OF THE RECOMMENDATIONS.....	14
APPENDIX A. AGENDA.....	15
APPENDIX B. LIST OF EXPERTS.....	17
APPENDIX C. LIST OF DOCUMENTS.....	21
APPENDIX D. GLOBAL OVERVIEW OF IUU FISHING AND ITS IMPACTS ON NATIONAL AND REGIONAL EFFORTS TO MANAGE FISHERIES SUSTAINABLY: THE RATIONALE FOR THE CONCLUSION OF THE 2001 FAO INTERNATIONAL PLAN OF ACTION.....	23

<u>APPENDIX E. FLAG STATE RESPONSIBILITY AND THE CONTRIBUTION OF RECENT INTERNATIONAL INSTRUMENTS IN PREVENTING, DETERRING AND ELIMINATING IUU FISHING</u>	<u>47</u>
<u>APPENDIX F. FISHING VESSELS OPERATING UNDER OPEN REGISTRIES AND THE EXERCISE OF FLAG STATE RESPONSIBILITIES: INFORMATION AND OPTIONS</u>	<u>71</u>
<u>APPENDIX G. GUIDELINES FOR THE CASE STUDIES</u>	<u>103</u>
<u>APPENDIX H. THE COOK ISLANDS – A CASE STUDY</u>	<u>107</u>
<u>APPENDIX I. CYPRUS – A CASE STUDY</u>	<u>121</u>
<u>APPENDIX J. PANAMA – A CASE STUDY</u>	<u>143</u>
<u>APPENDIX K. INTERNATIONAL NETWORK FOR THE COOPERATION AND COORDINATION OF FISHERIES-RELATED MONITORING, CONTROL AND SURVEILLANCE ACTIVITIES</u>	<u>157</u>

ACRONYMS AND ABBREVIATIONS

BTSD	Bluefin Tuna Statistical Document
CDS	Catch Documentation Scheme
COFI	FAO Committee on Fisheries
CIMSRL	Cook Islands Maritime & Shipping Registry
CPCs	Contracting Parties and cooperating non-Contracting Parties
CRS	Cyprus Register of Ships
CSD	Commission on Sustainable Development
DFMR	Department of Fisheries and Marine Research of the Cyprus Ministry of Agriculture Natural Resources and the Environment
DMS	Department of Merchant Shipping of the Cyprus Ministry of Communications and Works
DWFN	Distant Water Fisheries Nation
EPO	Eastern Pacific Ocean
EC	European Community
EU	European Union
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
FOC	Flag of Convenience
GRT	Gross Registered Tons
GT	Gross Tons
HACCP	Hazard Analysis and Critical Control Point
HSVAR	High Seas Vessels Authorization Record
ICJ	International Court of Justice
ILO	International Labour Organization
IMO	International Maritime Organization
IPOA	International Plan of Action
ITF	International Transport Workers Federation
ITLOS	International Tribunal on the Law of the Sea
IUU fishing	Illegal, unreported and unregulated fishing
LSFV	Large Scale Fishing Vessel
LSTFV	Licensed Large-scale Tuna Longline Fishing Vessels
MARPOL	International Convention for the Prevention of Pollution from Ships, 1973
MCS	Monitoring, control and surveillance
MCI	Maritime Cook Islands Limited
MMR	Ministry of Marine Resources of the Cook Islands
MOT	Ministry of Transport of the Cook Islands
NGO	Non-governmental Organization
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
RFMO	Regional Fishery Management Organization
SBT	Southern Bluefin Tuna
SEFC	Southeast Fisheries Science Center
SFVR	Small Fishing Vessel Register
SOLAS	International Convention for the Safety of Life at Sea, 1974
TIS	Trade Information Scheme
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS	1982 United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNICPOLOS	United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea
VMS	Vessel Monitoring System

WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

ACRONYMS FOR REGIONAL FISHERY BODIES AND ARRANGEMENTS

APFIC	Asia-Pacific Fisheries Commission
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
FFA	South Pacific Forum Fisheries Agency
GFCM	General Fisheries Commission for the Mediterranean
IATTC	Inter-American Tropical Tuna Commission
IBSFC	International Baltic Sea Fishery Commission
ICCAT	International Commission for the Conservation of Atlantic Tuna
IOTC	Indian Ocean Tuna Commission
IPHC	International Pacific Halibut Commission
IWC	International Whaling Commission
LVFO	Lake Victoria Fisheries Organization
NAFO	Northwest Atlantic Fisheries Organization
NAMMCO	The North Atlantic Marine Mammal Commission
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North-East Atlantic Fisheries Commission
NPAFC	North Pacific Anadromous Fish Commission
OLDEPESCA	Latin American Organization for the Development of Fisheries
PSC	Pacific Salmon Commission
SEAFO	Southeast Atlantic Fisheries Organization
SPC	Secretariat of the Pacific Community

OPENING OF THE SESSION

1. The Expert Consultation on Fishing Vessels Operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing was held at the Southeast Fisheries Science Center, National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Miami, from 23 to 25 September 2003. It was attended by 18 Experts who participated in the Consultation in their personal capacities. A list of the Experts is attached as Appendix B. Mr Jean-Francois Pulvenis de Séligny, Director, Fishery Policy and Planning Division, Fisheries Department, Food and Agriculture Organization of the United Nations (FAO), Rome, Italy, opened the Consultation.

2. Mr Pulvenis de Séligny welcomed the Experts to the Consultation on behalf of Mr Jacques Diouf, Director-General of FAO and Mr Ichiro Nomura, Assistant Director-General, Fisheries Department, FAO, Rome. In his opening remarks, he noted the international concern about illegal, unreported and unregulated (IUU) fishing and the lack of flag State control over fishing vessels being exercised by some States including some that operate open registries. He stated that FAO had a process underway to combat IUU fishing and bolster the implementation of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) that had been agreed in 2001. Mr Pulvenis de Séligny advised the Consultation that, in this respect and as a consequence of a decision of the Twenty-fifth Session of the Committee on Fisheries (COFI) in February 2003, a Technical Consultation on IUU fishing, fleet capacity and subsidies would be held in June 2004. The results of this Expert Consultation would provide an important input for that Technical Consultation. He also noted that Experts for this Consultation had been selected because of their experience and background with open registries as well as their experience in the field of fisheries. He stressed that Experts were participating in the Consultation in their personal capacity and not as representatives of their countries or governments. He thanked NMFS and the Director of the Southeast Fisheries Science Center and her staff for having supported the Consultation by accepting to provide the facilities to host it.

3. Dr Nancy B. Thompson, Director, Southeast Fisheries Science Center welcomed, on behalf of NOAA, the participants to the meeting. She explained the role of the Center, noting in particular its interaction with countries of the Caribbean and its work in support of International Commission for the Conservation of Atlantic Tuna (ICCAT).

SELECTION OF OFFICERS

4. Mr David Balton assumed the Chair for the Consultation in his capacity as a resource person.

5. The Chair pointed out that the international community had been seeking to achieve sustainable fisheries and that its efforts had not been very successful. While there were many reasons for this situation, this meeting had been convened by FAO to look at one aspect of the problem. The Chair expressed the view that the Experts would be able to provide advice and information on the operation of open registries and assist in shaping recommendations. He also underscored that Experts were participating in the Consultation in their personal capacities and expressed the view that Experts should participate openly and freely.

ADOPTION OF THE AGENDA

6. The Agenda for the Consultation is attached as Appendix A.
7. The documents for the Consultation are listed in Appendix C.

OVERVIEW OF IUU FISHING ISSUES AND FLAG STATE RESPONSIBILITY

8. A paper entitled "Global overview of IUU fishing and its impact on national and regional efforts to manage fisheries sustainably: The rationale for the conclusion of the 2001 FAO International Plan of Action" was presented by Dr. David Doullman of the Fisheries Department, FAO. The paper is attached as Appendix D. It outlined a number of issues fundamental to IUU fishing. The paper also considered the role of the IPOA-IUU, discussing in particular the range of measures provided in the IPOA "tool kit". The paper drew a number of conclusions and emphasised that all countries, including those that operate open registries, must ensure that their flag vessels are properly authorized to fish and that effective flag State control must be exercised if the deleterious effects of IUU fishing are to be avoided. A discussion of the international responses to such fishing followed, in terms of global action, responses by regional fishery management organizations or arrangements (RFMOs) and national initiatives to prevent, deter and eliminate IUU fishing.

9. Ms Annick Van Houtte of the Development Law Service, FAO, presented a paper entitled "Flag State responsibility and the contribution of recently concluded international instruments in preventing, deterring and eliminating illegal, unreported and unregulated fishing". The paper is attached as Appendix E. It noted that granting the right to fly a country's flag raises issues of jurisdiction, control and revenue. It highlighted the fact that, over the last decade, greater and determinative weight has been given to the concept of flag State responsibility for compliance control. It stressed that the issue of "flags of convenience" was not new and the expressions "flag of convenience" or "open registry" States referred often to States that permitted foreign vessel owners having no real connection with those States to register their vessels under the flags of those States.

10. The presentation also looked at how recent international fisheries instruments have addressed IUU fishing with a particular focus on flag State responsibility, including flag State duties. A number of States, while accepting the rights linked to the granting of nationality, have not accepted their correlative obligations of performance. In the high seas fisheries context, a number of States have shown themselves to be either unwilling or unable to exercise their flag State jurisdiction in a manner consistent with their duties under the 1982 United Nations Convention on the Law of the Sea (UNCLOS or the 1982 UN Convention). International law appeared to sidestep the issue of the "genuine link", focusing instead on the concept of flag State responsibility. As a result, if the international fisheries instruments were not widely implemented, the problems identified at the root of IUU fishing would remain.

11. Following the two presentations, the concept of the "genuine link" was discussed. Some Experts believed that the issue should be addressed with the purpose of clarifying the term's meaning. This could be accomplished, for instance, through the development of a set of criteria on what constitutes a "genuine link" between a vessel and a flag State – a step that would also contribute to strengthening the concept. Other Experts expressed the view that such clarification had already been attempted, not very successfully, and that instead there was a need to look for more practical solutions or guidelines to assist flag States in exercising effective control over their fishing vessels.

12. In this respect, the Consultation recognized that meaningful flag State control was difficult to achieve where fishing vessels operated at distances far from the flag State itself. It was suggested that one option to address this problem would be to rely on other countries to detect and report to the flag State instances of illegal fishing and related activities. In this regard, it was acknowledged that there was a need for greater cooperation between all States if flag State control were to be improved. The Consultation expressed the view that effective mechanisms with “teeth” were essential for this purpose.

13. In many governments, administrative problems arose because of insufficient cooperation and communication between national agencies responsible for vessel registration and those charged with fisheries management. The Consultation noted that although there had been improvements by some governments in coordinating these functions, other governments should pay attention to this matter as a means of enhancing and streamlining national coordination.

14. Problems of transshipment and bunkering at sea were considered significant by the Consultation. Some Experts stated that the concept of a home port for some vessels was not a reality. Consequently, restrictions were increasingly being imposed by countries on transshipments and bunkering at sea. The Experts were of the opinion that these activities must be undertaken in port if controls and checks were to be implemented effectively.

15. The Consultation exchanged views on coastal States that have fisheries access agreements with other States. It was pointed out that under these agreements, IUU fishing and related activities often occur. Consequently, the Experts agreed that governments entering into such access agreements should ensure that they contained adequate provisions for effective flag State control.

FISHING VESSELS OPERATING UNDER OPEN REGISTRIES AND THE EXERCISE OF FLAG STATE RESPONSIBILITIES

16. FAO Consultant, Ms Judith Swan, made a presentation entitled “Fishing vessels operating under open registries and the exercise of flag State responsibilities: Information and options”. Her paper is attached as Appendix F. The purpose of the paper was to review activities relating to the fishing fleets of countries with open registries and, in particular, those activities that result from countries not exercising effective flag State control over those fleets. This review was based on information available in the public domain and communications with officials in States, RFMOs and international organizations and agencies. The paper noted that the number of fishing vessels operating under open registries was increasing. A related concern was to secure the effective control of fishing vessels by the flag State. This concern was evidenced by a range of post-United Nations Conference on Environment and Development (UNCED) international instruments that progressively include clearer and more thorough duties of the flag State.

17. The current interpretation of the provision of the 1982 UN Convention on the need for a “genuine link” between a ship and its flag State, as set out in international jurisprudence, was *to secure more effective implementation of the duties of the flag State*. An aim of the paper was to report on how and where this is being achieved. Flag State responsibilities in relation to fishing vessels were reviewed as they appear in the recent international instruments: the 1982 UN Convention, the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement), the 1995 Agreement for the Implementation of the Provisions of the

United Nations Convention on the Law of the Sea of 10 December 1992 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995 UN Fish Stocks Agreement), the 1995 FAO Code of Conduct for Responsible Fisheries and the 2001 FAO IPOA-IUU Fishing.

18. The paper discussed the rationale for maintaining or using open registries from the point of view of the open registry State, the ship owner and the fishing vessel owner. National policy, legislation and administrative arrangements for open registries were explained. The varying degrees of control and compliance implemented by the flag State were noted, and the effect of these on fishing fleets flying its flag was observed.

19. The paper also contained many useful details about open registry procedures, including national contacts, administration, application information and procedures. Measures taken by some open registry States to improve the application process and deregister, fine or otherwise deal with offending vessels were reported. Actions taken by RFMOs to implement flag State compliance were detailed, noting some compelling successes. Many offenders were open registry ships, and their nationality was noted where information is available.

20. Following the presentation by Ms Swan, the discussion focused primarily on the fishing vessels registration procedures and some related initiatives taken at national level and within RFMOs.

21. The Consultation noted that national procedures may subject registration to various requirements, *inter alia*, the requirement to provide a certificate of deletion from a previous registry. Some Experts were of the opinion that for a certificate to serve its purpose of preventing and eliminating re-flagging practices it should include reasons for de-registration and other pertinent information.

22. A number of Experts drew the attention of the Consultation to the problems related to the chartering of fishing vessels, the various chartering arrangements in place and the potential consequences thereof with respect to flag State responsibility. It was pointed out that chartering arrangements, unless they are carefully monitored and controlled, can lead to IUU fishing. Some Experts reported that in some countries, chartered vessels took on the nationality of the nationals who chartered the vessel for the duration of the charter agreement.

23. The use of the term "flag of convenience" was considered by the Consultation to be inappropriate because of its lack of accuracy and negative connotations. The use of the term "flag of non-compliance", as stated in a resolution of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), was noted as a possible alternative term.

24. The Consultation was advised that small island developing States and other developing coastal countries were among those that suffer the most from the adverse effects of IUU fishing. They often lacked the resources and infrastructure to monitor and exercise effective jurisdiction. Support and technical assistance were required to improve their capacities. The Chair took the opportunity to refer to the Trust Fund which is being established under the auspices of the United Nations with a view to assist developing countries in meeting their responsibilities in implementing the 1995 UN Fish Stocks Agreement. Some Experts suggested that a possible activity under this Trust Fund could be support for the establishment of a national vessel monitoring system for the purposes of improving MCS capacities.

25. Discussions revealed the existence of various State practices and rules pertaining to fishing vessel registration. Some States make reasonable efforts to enquire about the history of a fishing vessel; other States have adopted a policy not to register foreign-owned fishing vessels or to require the creation of a local company. Some Experts considered it difficult to seek information from vessel owners on previous changes in registration. However, other Experts observed that the lists of vessels regarded as being IUU fishing vessels established by RFMOs constituted useful sources of information. The Consultation noted that, in most States, should a pattern or evidence of "flag hopping" or IUU fishing emerge, registration was likely to be refused. Reference by some Experts was also made to the positive role of the FAO High Seas Vessels Authorization Record (HSVAR) that has been established under the 1993 FAO Compliance Agreement. The HSVAR could provide a potential source of information for registries. For this reason, it was suggested that the HSVAR might be broadened on a voluntary basis to allow for inputs from countries that are not yet Party to the Agreement. In this context, it was also mentioned that ICCAT had adopted the concept of listing specific IUU fishing countries by agreeing on a measure identifying countries whose vessels had been fishing for tuna and tuna-like species in a manner that diminished the effectiveness of ICCAT conservation and management measures. While appraising this initiative, the Consultation noted that it would be important for the system to operate in an equitable manner.

26. Another element discussed by the Consultation concerned the effectiveness of de-registration as a sanction for IUU fishing. Some Experts were of the view that de-registration should remain an option of last resort. This was because of the inherent risk of losing track of a fishing vessel once it had been deleted from a register. Some Experts considered this practice as simply transferring the problem to another State.

27. The Consultation noted that many flag States appeared to be strengthening their control over fishing vessels by ensuring that there was a link between the process by which they registered fishing vessels and the process by which they granted authorization to fish.

28. Drawing on their experiences, some Experts believed that there was need to strengthen technical and administrative registration procedures and the capacities of States to ensure effective flag State control over fishing vessels. The Consultation also was of the view that there would be merit in reviewing measures to be taken to harmonize approaches towards responsible registration procedures.

PRESENTATION OF CASE STUDIES

29. Three case studies were presented during the Consultation by Experts from the Cook Islands, Cyprus and Panama, based on guidelines provided by the FAO Secretariat. These guidelines are attached as Appendix G.

Cook Islands

30. Mr Joshua Mitchell and Mr Garth Broadhead presented a case study on the Cook Islands registry. The paper is attached as Appendix H. This case study aimed to highlight policies, legislation and methodologies employed within the Cook Islands with respect to the registration of vessels, and in particular fishing vessels. The study explained the measures that the Cook Islands has in place, following registration, to meet its flag State responsibilities and thus effectively exercise jurisdiction and control in administrative, technical and social matters over ships flying the Cook Islands' flag. In addition, the study reviewed the problems that countries such as the Cook Islands faced in dealing with non-compliant flag vessels, and

outlined the measures or sanctions imposed on vessels that infringed the terms of the registration and relevant fishing authorization.

31. In discussion following the presentation, the Cook Islands Experts advised the Consultation that precautions are taken to ensure that high standards of confidentiality are maintained with respect to data and information provided in connection with the registration of fishing vessels. Persons registering vessels on the register are given this assurance and information is not passed to third parties.

32. With respect to chartering arrangements, and recognizing that these arrangements probably provided the greatest potential for IUU fishing, the Cook Islands Experts noted that most of the chartered vessels on the register are based within the country. As a result, it was reasonably easy to undertake the necessary inspections when the vessels were in port unloading their catch.

33. The Consultation was advised that there were only three demise chartered vessels on the Cook Islands register that operated on the high seas, out of a total of 13 high seas vessels. They were required to provide declarations with respect to the fish caught, the geographical area of operation and so on. Limitations are placed on the operational areas of vessels that fish on the high seas so as to avoid conflict with RFMOs, to which the Cook Islands are not party. The Cook Islands Experts advised that catch certification was currently in place operating under the present requirements of the Cook Islands (and where possible the regulations of the destination State) but noted, particularly in relation to Hazard Analysis and Critical Control Point (HACCP) requirements, that the issue of catch certification was being revised and appropriate regulations drafted.

34. Concerning the matter of observers, the Cook Islands Experts advised the Consultation that the placement of observers on fishing vessels was a condition of registration. These observers fulfilled both a scientific and compliance role and efforts were underway to strengthen their role. Training for observers was provided by South Pacific regional organizations.

35. The Cook Islands Experts noted that, as a consequence of establishing a responsible register on terms decided by the Cook Islands Government, a number of important longer-term capacity building and investment benefits had resulted. In this respect, establishment of the register had yielded very positive developments for the country.

Cyprus

36. Mr Gabriel Gabrielides presented a case study concerning registration of fishing vessels in Cyprus. The paper is attached as Appendix I. The paper noted that two different government departments are responsible for the registration of fishing vessels. The main register for all vessels, known as the Cyprus Register of Ships (CRS), created in 1963, is maintained by the Department of Merchant Shipping. All fishing vessels greater than 15 gross tons (GT) are registered on the CRS. Smaller fishing vessels are registered on the Register for Small Fishing Vessels which is maintained by the Department of Fisheries and Marine Research. This Register includes about 600 local fishing boats. The CRS is an open register and attracts a great number of foreign vessels, making it the sixth biggest in the world with a merchant fleet exceeding 26 million GT.

37. In recent years, much work has been undertaken to transform the image of the Cyprus flag. New and tougher legislation has been enacted and new international conventions have

been ratified. The policy for the registration of fishing vessels has been modified after close cooperation of the two relevant departments. As a result, it had been decided to deny the registration of fishing vessels that did not belong to Cypriot nationals. Furthermore, in the case of foreign-owned fishing vessels already on the CRS, the policy was to encourage these vessels to change flag. Fisheries legislation has been streamlined to allow for the monitoring, control and surveillance (MCS) of fishing vessels irrespective of where they fish in the world. As a result of this modification, foreign-owned vessels cannot be granted an authorization to fish and consequently, if they continue flying the Cyprus flag, they are fishing illegally. However, the CRS still includes foreign fishing vessels that are registered on a "parallel-out" basis (i.e. the vessels fly another flag and not the Cyprus flag). This issue was currently under review.

38. In discussion following his presentation, the Expert referred to the recent policy resulting in the reduction of foreign fishing vessels on the Cypriot register from 108 to 10. He added that about half of the departing vessels had been de-registered while the others "paralleled out". The latter vessels were believed to be fishing under licenses of another country. The remaining 10 vessels were fishing illegally, and there was no indication where they were operating. The Expert stated that Cyprus was trying to locate them, and intended to strike them from the CRS.

39. It was believed that this situation highlighted the difficulties of locating vessels due to factors such as lack of interest by port State controllers with primary interests in safety and International Maritime Organization (IMO) requirements, and the fact that many vessels were built with the same specifications, making identification of an individual vessel difficult. The Expert noted that FAO was active in elaborating port State controls for fishing vessels.

40. As part of the process of joining the European Union (EU) and consequently being subject to its measures, the Expert stated that the policy adopted was designed to maximize EU benefits for Cypriot vessels. The intention was therefore to eliminate foreign fishing vessels from the register, which provided an impetus for recent actions by the Government. In addition, by implementing measures in relation to the register to reduce fishing capacity, the Expert noted that funds had been allocated towards scrapping registered vessels.

41. Regarding the elimination of foreign fishing vessels, the Expert pointed out that one option would have been to keep fishing vessels on the register. However, this option would have required the establishment of an elaborate inspection system which was not considered cost effective.

42. The Expert discussed amendment of the law as an element of improving control over the fishing fleet. One issue cited was the legal definition of a fishing vessel, noting that factory and support vessels had recently been included as fishing vessels in the laws of one country to extend needed control. The Expert also noted that modification of policy could be effective in some areas without formal legal amendment.

43. The potential for dual registration in "parallel-out" situations was discussed by the Consultation. However, the Expert advised that the legal requirement for such situations was that vessels must not use the Cypriot flag, and the flag State was responsible for controlling vessel activities. It was a situation of dual registration, but use of a single flag.

44. The importance of a legal requirement for fisheries authorities to give written approval prior to the registration of a fishing vessel was highlighted by the Expert. Ship owners could

institute legal proceedings if the approval process was delayed pending authorization by the fisheries authorities, and there was presently no legal requirement for such approval. The Expert noted that legislative requirements specifying authorizations and approvals for the construction of fishing vessels for national registration (such as specifying fishing grounds, tonnage and technical attributes) were also considered important.

45. The Consultation noted that some open register States, in reviewing the costs and benefits of maintaining fishing vessels on their registries, have determined that the costs of meeting international obligations outweigh the financial benefits that accrue from the registration of these vessels and, as a result, have taken measures to de-register fishing vessels. However, the Consultation further noted that such vessels will migrate somewhere else. If these vessels register in States that meet their international obligations, this situation is an improvement. However, this is not always the case.

Panama

46. Mr Arnulfo Franco presented a case study concerning the Panamanian vessel registry. The paper is attached as Appendix J. The paper noted that the Panamanian registry was established in 1925. The main users of the registry were owners of vessels other than fishing vessels. Until 1998, the registry had a significant number of fishing vessels. However, as a result of various State actions (including the requirement that vessels obtain a fishing license prior to registration with the Merchant Marine), there was a mass exit of fishing vessels and the elimination of other vessels from the registry. Later, in 2001, standards were developed to prevent the entry of IUU fishing vessels onto the registry and also as a means of controlling longline fishing capacity. Concurrently, Panama developed a series of measures to tackle the problem of IUU fishing and to ensure compliance by fishing vessels on the Panamanian registry.

47. In discussion following his presentation, the Expert acknowledged that some significant problems in controlling fishing fleets on open registries stemmed from excessive bureaucratic requirements. To address increased bureaucracy and the gap between the registration of vessels in general and the control of fishing vessels, the Expert advised that a strategy had been adopted that contemplated the elaboration and implementation of an action plan on IUU fishing. This plan would include provision for the elimination of vessels without a fishing licence by the Merchant Marine authorities. It was deemed the best approach to maintain open communications with the Merchant Marine authorities and the lawyers, as legal changes required a more complex procedure.

48. The Expert advised that it was difficult to determine the physical existence of some unlicensed fishing vessels because of lack of information. In this regard, he added that one problem was that registered vessels may not in fact exist and this could not be confirmed. Another problem was that some vessels had been registered at a time when there were no laws requiring compliance. As a means of assisting with the control of fishing vessels, the Expert expressed the view that a procedure requiring vessels to submit certificates every year could help in confirming the existence of registered vessels.

49. The Expert noted that many vessels that were de-registered from the Panamanian register migrated to other open registries. However, one of these registries had been aggressive in de-registration.

50. The Expert advised the Consultation that Panamanian practice was not to licence tender vessels where transshipment was prohibited, but that there was general acceptance of licencing transshipment operations because of inspection requirements under HACCP procedures. A problem was the difficulty in verifying transshipment records as fish could have been caught during illegal operations. The registration of support vessels generated significant revenue. The Expert added that there was an initiative to designate transshipment vessels as fishing vessels so that control could be more effectively exercised. At the present time such vessels are considered as cargo vessels.

51. Since the adoption of the new policy in Panama, the Expert advised that there had been an increase in landings, reflecting in part the effectiveness of the new policy.

52. The Consultation reiterated the need to avoid using the term "flag of convenience" because there was no legal or technical definition, and this term did not reflect appropriately and accurately the situation. The Consultation took note with interest of the use of the term "flag of non-compliance" that has been adopted in CCAMLR as a possible alternative.

53. With respect to observer programmes, especially those adopted by RFMOs, the Consultation noted their value in helping control the operations of fishing fleets. National observer programmes were also important.

INTERNATIONAL MONITORING, CONTROL AND SURVEILLANCE NETWORK

54. Ms Michele Kuruc presented a paper entitled "International Network for the cooperation and coordination of fisheries-related monitoring, control and surveillance activities". The paper is attached as Appendix K. It pointed out that the International Monitoring, Control and Surveillance Network (MCS Network) offered another effective tool in the fight against IUU fishing. The Network, created in 2001, consists of governmental MCS organizations and others that cooperate with each other on a voluntary basis and share information and experiences. The purpose of the Network includes advancing MCS efficiency, sharing training, building MCS capacity, and helping countries satisfy their national MCS responsibilities and international commitments.

55. The Consultation was informed that there were currently 17 Network member countries and entities, and that many other countries were actively considering membership. It was further noted that, in addition to the voluntary nature of participation in the Network, no costs were associated with membership. Members determined their own level of participation, based on available resources. It was stressed that the Network respected fully the laws, regulations or restrictions that each country had adopted with regard to sharing various types of information and ensuring confidentiality.

56. Ms Kuruc explained that details of MCS Network operations were provided in the Technical Terms of Reference, which were developed at the first meeting of the Network's Executive Committee held in Key Largo in 2001. The Terms outlined the MCS Network's objectives and functions, organization, protocol for information exchange and information requirements. It was noted that the Executive Committee guided the Network in its growth and operations, and that it met periodically and stayed in touch through telephone, fax, mail and electronic communications.

57. The Consultation was also informed that the Executive Committee maintained a web site, which can be accessed at www.imcs.org (user name: mcs; password: mcsnet).

58. In discussion following the MCS Network presentation, several Experts observed that the Network was already proving highly useful as a tool for MCS information dissemination and as a means for verifying background data related to vessel registration applications. The importance of keeping the information posted on the Network web site base as up-to-date as possible was firmly emphasized.

59. It was also observed that the functioning of the Network would strongly benefit from the involvement of certain fisheries-related non-governmental organizations and fishing industry associations committed to the promotion of responsible fisheries practices and the prevention of IUU fishing. It was the experience of some Experts that such organizations and associations were often enthusiastic and efficient partners when it came to the provision and exchange of information on IUU fishing incidents. It was also believed that closer links with FAO, and more involvement of the Organization, would also assist in strengthening the Network and make it more efficient.

ROUND TABLE DISCUSSIONS ON THE DEVELOPMENT OF OPTIONS AND RECOMMENDATIONS

60. The Consultation developed the following recommendations for adoption:

All States

- All States that have not yet done so should consider becoming party to the 1982 UN Convention on the Law of the Sea, the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement.
- All States should fully implement the FAO Code of Conduct for Responsible Fisheries and the IPOA-IUU.
- All States should develop national plans of action to prevent, deter and eliminate IUU fishing, as envisioned in the IPOA-IUU.
- All States should adopt legislation that makes it a punishable offence under their law for their nationals (natural and legal persons) to violate the fishery laws and other relevant laws of any other State or to undermine the effectiveness of conservation and management measures adopted by regional fishery management organizations.
- Penalties for fishery violations should be reviewed regularly to ensure that they are of sufficient gravity to deter future violations.
- A record of violations leading to sanctions imposed on a vessel should remain with the vessel, regardless of any change of name, registration, ownership or operator.
- Consideration should be given to creating a record of violations leading to sanctions imposed on owners, operators and masters of fishing vessels engaged in IUU fishing.
- States should closely control the transshipment process, including relevant activities of fishing support vessels.
 - States should consider prohibiting transshipment of fish at sea entirely.
 - At a minimum, States should require prior authorization for transshipment of fish at sea and should require vessels to report information in paragraph 49 of the IPOA-IUU.
- All States should ensure that their nationals are aware of the adverse effects of IUU fishing on the conservation of fishery resources and should take measures to

discourage them from engaging in or doing business with individuals and companies engaged in IUU fishing.

- All States should consider participating in the International Network for the Cooperation and Coordination of Fisheries-Related Monitoring, Control and Surveillance Activities. Closer links should be forged between FAO and the Network as a means of strengthening the Network and making it more efficient.

Flag States

Flag states, particularly those that operate open registries, should be aware of their responsibilities as flag States under international law and should implement their responsibilities fully. Flag States should control the activities of their vessels. Fishing vessels may be re-registered and they should be de-registered only as a last resort.

General

- The procedure by which fishing vessels are registered should be transparent.
- Before a State registers a fishing vessel or issues to it a fishing authorization, it should ensure that it has the means to control effectively the activities of the vessel.
- States should require their fishing vessels, including as many small fishing vessels as possible, to be registered.
- Flag States should enquire at both the national and international levels about the history of fishing vessels before determining whether to register them. States should ensure that their national laws provide sufficient authority to deny registration, including provisional registration, to a vessel that appears to have been involved in "flag hopping" or that has a history of IUU fishing unless:
 - there has been a real change in ownership and operation of the vessel; or
 - having taken into account all relevant facts, the flag State determines that flagging the vessel would not result in IUU fishing;
- States should cooperate with one another in the exchange of information about vessels involved in "flag hopping" or that have a history of IUU fishing.
- Flag States should not register a vessel unless they have a notice of deletion from a previous registry.
- A flag State should maintain a comprehensive record of fishing vessels entitled to fly its flag.
- A flag State should prohibit its vessels from fishing without express authorization.
- A flag State should ensure that each of the vessels entitled to fly its flag fishing in waters outside its sovereignty or jurisdiction holds a valid authorization to fish issued by that flag State and should keep a record of such authorizations issued and should grant such authorization only to vessels properly registered and entered in its record of fishing vessels.
- A flag State should coordinate the functions of registering fishing vessels and granting authorizations to fish among its responsible government agencies.
- Flag States should submit data to FAO on their fishing vessels authorized to fish on the high seas and update those submissions regularly. Flag States should also submit register information to FAO on their vessels fishing/authorized to fish in waters under the national jurisdiction of other States.

- States should ensure that the laws governing vessel registration contain sufficient powers to refuse registration of vessels that appear to be involved in unethical practices, such as “flag hopping”.
- Flag States and coastal States should cooperate in carrying out these recommendations.

Monitoring, Control and Surveillance

- A flag State should know the location of its fishing vessels fishing in waters beyond its jurisdiction.
- Tools for tracking vessels include satellite-based vessel monitoring systems (VMS), mandatory position reporting by radio and mandatory maintenance of logbooks with frequent recording of vessel position.
- Flag States should consider developing and strengthening programmes to place observers on board fishing vessels, as appropriate.
- A flag State should require its fishing vessels to submit regular and timely reports on its fishing operations, including catch and effort data.
- If a flag State cannot monitor the fishing activities of its vessels on the high seas, it should consider authorizing other States to board and inspect those vessels on its behalf.
- Flag States should ensure that their vessels fishing on the high seas do not undermine fishery conservation and management measures that apply in any high seas area.

Chartering Arrangements

- All States involved in a chartering arrangement should take steps, within the limits of their respective jurisdiction, to ensure that the chartered vessel does not engage in or support IUU fishing.
- Chartering arrangements should be fully transparent. Such arrangements should identify clearly all parties involved and should specify which State is responsible for controlling the fishing activities of the vessel.
- States should not permit vessels with a history of IUU fishing to be used in chartering arrangements, unless:
 - there has been a real change in ownership and operation of the vessel; or
 - having taken into account all relevant facts, the flag State determines that flagging the vessel would not result in IUU fishing.

61. Recognizing the responsibility of flag States in taking action to combat IUU fishing, the Expert Consultation decided also to include the following recommendations.

Coastal States

- A coastal State should carefully control fisheries access by foreign vessels.
 - A coastal State should avoid granting access to vessels with a history of IUU fishing.
 - Before a coastal State permits a vessel registered in another State to fish in waters under its jurisdiction, it should verify that the vessel has received or will

receive from its flag State a specific authorization to fish in waters beyond the jurisdiction of the flag State.

- A coastal State should maintain a record of vessels not flying its flag authorized to fish in waters under its jurisdiction.
- A coastal State should require foreign vessels granted fisheries access to use VMS so as to have real-time knowledge of vessel positions and regular data reports.
- A coastal State should consider requiring foreign vessels, or a certain percentage of them, to carry observers.
- Coastal States in a given region should consider developing joint or common rules for fisheries access and regional registries and should cooperate in MCS efforts.

Port States

- Flag States and port States should cooperate with each other in carrying out these recommendations.
- A port State should require fishing vessels not flying their flag seeking port access to provide at a minimum:
 - reasonable advance notice of their entry into port;
 - a copy of their authorization to fish issued by the flag State and where appropriate, the relevant coastal State; and
 - details of their fishing trip and quantities of fish on board.
- A port State should also require other vessels not flying its flag involved in fishing-related activities, particularly transport vessels, to provide comparable data before entering port.
- Except in cases of *force majeure* or distress, a State should only grant fishing vessels not flying its flag access to its ports where the State has the capability to conduct vessel inspections. During such inspections, a port State should collect at least the following information, which should be provided to the flag State and, where appropriate, to the relevant coastal State and regional fishery management organizations:
 - the flag State of the vessel and identification details;
 - name, nationality, and qualifications of the master and the fishing master;
 - fishing gear;
 - catch on board, including origin, species, form, and quantity;
 - where appropriate, other information and documentation required by a regional fishery management organization or international agreement; and
 - total landed and transhipped catch.
- If a State has reasonable grounds for suspecting that a vessel voluntarily in its port has engaged in or supported IUU fishing, the port State should:
 - not allow the vessel to land or transship fish in its port;
 - immediately report the matter to the flag State; and
 - if the suspected IUU fishing may have taken place in waters under the jurisdiction of another State or in waters under the purview of a regional fishery management organization, immediately report the matter to that State and/or the regional fishery management organization as well.

- If the suspected IUU fishing may have taken place in waters under the jurisdiction of the port State, that State should exercise its jurisdiction as a coastal State to investigate and, if appropriate, prosecute and penalize those responsible for the IUU fishing.
- If the suspected IUU fishing may have taken place in waters beyond the jurisdiction of the port State, the port State may take action against the vessel and its operators with the consent of, or at the request of, the flag State or, where appropriate, the coastal State.

Assistance to Developing States

- Due consideration should be given to the requirements of developing countries, in accordance with Article 5 of the 1995 FAO Code of Conduct for Responsible Fisheries.
- All States should provide assistance to developing States to promote implementation of the IPOA-IUU and to allow developing States to fulfil their international responsibilities, including as flag States, coastal States and port States.
- Such assistance should include training and capacity building, as well as other financial and technical assistance.
- FAO, international financial institutions, and other relevant international organizations should contribute to the provision of such assistance.

OTHER MATTERS

62. The Expert from Mauritania made a presentation on the fisheries sector and the various initiatives undertaken by Government with respect to the sector. Curbing IUU fishing was essential for the Government. It has recently adopted the Fifth Strategy for Fisheries, a management plan for cephalopods and was in the process of finalising a coastal fisheries management plan. There are two vessel registries in Mauritania: a register/record of fishing licences and a register of fishing vessels. The Expert informed the Consultation that a new Fisheries Law and a Decree was adopted in 2001.

ADOPTION OF THE RECOMMENDATIONS

63. The recommendations in paragraphs 60 and 61 were adopted by the Expert Consultation on 25 September 2003.

APPENDIX A

AGENDA

- 1) Opening of the Session
- 2) Selection of Officers
- 3) Adoption of the Agenda
- 4) Overview of IUU Fishing Issues and Flag State Responsibility
 - (i) Global overview of illegal, unreported and unregulated fishing and its impacts on national and international efforts to sustainably conserve and manage fisheries
 - (ii) Flag State responsibility and the contribution of recently concluded international instruments in preventing, deterring and eliminating IUU fishing
- 5) Fishing vessels operating under open registries and the exercise of flag State responsibilities
- 6) Presentation of case studies
 - (i) Cook Islands
 - (ii) Cyprus
 - (iii) Panama
- 7) International MCS Network

International network for the cooperation and coordination of fisheries-related monitoring, control and surveillance activities
- 8) Round-table discussions on the development of options and recommendations
- 9) Other matters
- 10) Adoption of the recommendations

APPENDIX B

LIST OF EXPERTS

CHAIRPERSON

BALTON David
Deputy Assistant Secretary for Oceans and
Fisheries
U.S Department of State
2201 C Street, NW
Washington, DC 20520
USA
Tel: (+1) 202 647 2396
Fax: (+1) 202 647 0217
E-mail: baltonda@state.gov

EXPERTS

BRAYNEN Michael
Director of Fisheries
Department of Fisheries
Ministry for Agriculture, Fisheries and Local
Government
P.O. Box N-3028
Levy Bldg, East Bay St
Nassau
Bahamas
Tel: (+242) 393 1777
Fax: (+242) 393 0238
E-mail: michaelbraynen@bahamas.gov.bs
fisheries@bahamas.gov.bs

BOTHWELL John
Research Officer,
Department of Environment,
Cayman Islands
P. O. Box 486 GT,
Marco Giglioli Building,
580 North Sound Road,
Grand Cayman
Tel: (+345) 949 8469
Fax: (+345) 949 4020
E-mail: john.Bothwell@gov.ky

BROADHEAD Garth
Maritime Cook Islands Ltd.
PO Box 514
Rarotonga
Cook Islands
Tel: (+682) 23848
Fax: (+682) 23846
E-mail: garth@maritimecookisland.com

DOMINGUE Gerard
MCS Manager
Seychelles Fishing Authority
PO Box 449
Victoria
Mahe
Seychelles
Tel: (+248) 670 300
Fax: (+248) 224 508
E-mail: gdomingue@sfa.sc

FRANCO Arnulfo
Dirección General de Recursos Marinos y
Costeros.
Clayton #404-A Panamá,
Panama
Tel: (+507) 232 7510
Fax: (+507) 232 6477
E-mail: afranco@amp.gob.pa
alfranco27@yahoo.com

GABRIELIDES Gabriel P.
Director,
Department of Fisheries and Marine Research
13 Aeolou St.
Nicosia 1416
Cyprus
Tel: (+357) 2280 7867
Fax: (+357) 2278 1226
E-mail: ggabriel@cytanet.com.cy

MARTI DOMINGUEZ Carmen (Ms)
Counselor
International Fisheries
Ministerio de Agricultura, Pesca y
Alimentación
José Ortega y Gasset, 57
28006 Madrid
Spain
Tel: (+34) 91 3476169
Fax: (+34) 91 3476049
e-mail: cmartido@mapya.es

MAMBI Stephen
Senior Advisor to the Directorate of Economic
Affairs of the Netherlands Antilles Central
Government
Gomezplein #4, Curacao
Netherlands Antilles
Tel: (+599) 9 4656236
(+599) 9 4623676 (Fekoskan office)
Fax: (+599) 9 4656316
E-mail: samcur@attglobal.net
Fekoskan@attglobal.net

MICHA Ndong André
Dirección General de Pesca;
Ministerio de Pesca y Medio Ambiente
Barrio Semu, Malabo
Equatorial Guinea
Tel: (+240) 93449/240 92809/
(+240) 74215
Fax: (+240) 92905

MITCHELL Joshua
Director of Policy and Resource Management
Ministry of Marine Resources
PO Box 85
Rarotonga
Tel: (+682) 28 721
Fax: (+682) 29 721
E-mail: J.Mitchell@mmr.gov.ck

OULD TOUEILIB Cherif
Directeur des études et de l'Aménagement des
ressources halieutiques
Ministère des pêches et de l'économie
maritime
B.P. 137
Nouakchott
Mauritania
Tel: (+222) 6303677
Fax/Tel: (+222) 5291339
E-mail: deahr@mpem.mr /cherif@mpem.mr

PETELO Vilami 'Anitmoni
Principal Fisheries Officer
Head of Resources Management Division
Ministry of Fisheries
Government of Tonga
P.O. Box 871
Nuku'alofa
Tonga
Tel: (+676) 21-399/25 629
Fax: (+676) 23-891
E-mail: vapetelo@kallinet.to
vapetelo@hotmail.com

READ Andy
Department of Agriculture Fisheries and
Forestry
Rose House, 51 - 59 Circular Road
Douglas IM1 1AZ
Isle of Man
Tel: (+44) (1) 624 686045
Fax: (+44) (1) 624 685851
E-mail: Andy.Read@daff.gov.im

RYAN Raymond
Chief Fisheries Officer
Fisheries Division
Ministry of Agriculture and Fisheries
Richmond Hill
Kingstown
St Vincent and the Grenadines
Tel: (+1) 784 562738
Fax: (+1) 784 572112
E-mail: fishdiv@caribsurf.com

SEEBALUCK Pravinchand
Director of Shipping
Ministry of Public Infrastructure, Land
Transport and Shipping
4th Floor, New Government Centre
Port Louis
Mauritius
Tel: (+230) 201 2115
Fax: (+230) 201 3417
E-mail: pseebaluck@mail.gov.mu/
mtl@mail.gov.mu

SHEVLYAKOV Vladimir
Russian Federation State Committee for
Fisheries Representative in the USA
1609 Decatur Street, N.W.
Washington, DC 20011
USA
Tel: (+1) 202 726 3838
Fax: (+1) 202 726 0090
E-mail: rusfishatt@starpower.net

WILFRED Jeffery
 Director General
 Ministry of Agriculture, Quarantine, Forestry
 and Fisheries
 Private Mail Bag 039
 Port Vila
 Vanuatu
 Tel: (+678) 23406
 Fax: (+678) 26498
 E-mail: jwilfred@vanuatu.com.vu

ZHOU Yingqi
 Director
 Fishery Development Strategy and Policy
 Study Center
 Shanghai Fisheries University
 334 Jun Gong Road
 Shanghai 200090
 P.R. China
 Tel: (+862) 1 657 10293/0296 (O)
 (+862) 1 657 11412 (H)
 Fax: (+862) 1 656 84287
 E-mail: yqzhou@shfu.edu.cn

RESOURCE PERSONS

KURUC Michele (Ms)
 Chair, International MCS Network
 Assistant General Counsel for Enforcement
 and Litigation
 NOAA
 8484 Georgia Ave. Suite 400
 Silver Spring
 Maryland 20910
 USA
 Tel: (+1) 301 427 2202
 Fax: (+1) 301 427 2211
 E-mail: michele.kuruc@noaa.gov

TAHINDRO André
 Senior Law of the Sea Officer
 Division for Ocean Affairs and the Law of the
 Sea,
 Office of Legal Affairs
 Room DC2-0432
 United Nations
 New York, NY 10017
 USA
 Tel: (+1) 212 963 3946
 Fax: (+1) 212 963 5847
 E-mail: tahindro@un.org

TINKHAM Stetson
 Senior Fishery Officer
 OES/OMC Room 5806
 Washington, DC 20520- 7818
 USA
 Tel: +1 202 647 3941
 Fax: +1 202 736 7350
 E-mail: tinkhamss@state.gov

SECRETARIAT

PULVENIS DE SELIGNY Jean-Francois
 Director
 Fishery Policy and Planning Division
 Fisheries Department
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy
 Tel: (+39) 06 570 54138
 Fax: (+39) 06 570 56500
 E-mail: jeanfrancois.pulvenis@fao.org

DOULMAN David
 Senior Fishery Liaison Officer
 Fishery Policy and Planning Division
 Fisheries Department
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy
 Tel: (+39) 06 570 56752
 Fax: (+39) 06 570 56500
 E-mail: david.doulman@fao.org

REYNOLDS Eric
 Coordinator, FishCode Programme
 Fishery Policy and Planning Division
 Fisheries Department
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy
 Tel: (+39) 06 570 56807
 Fax: (+39) 06 570 56500
 E-mail: eric.reynolds@fao.org

VAN HOUTTE Annick (Ms)
 Legal Officer
 Development Law Service
 Legal Office
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy
 Tel: (+39) 06 570 54287
 Fax: (+39) 06 570 54408
 E-mail: annick.vanhoutte@fao.org

SWAN, Judith (Ms)
 FAO Consultant
 FishCode Programme
 Fishery Policy and Planning Division
 Fisheries Department
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy
 Tel: (+39) 06 570 56807
 Fax: (+39) 06 570 56500
 E-mail: judith.swan@fao.org

GUYONNET, Marianne (Ms)
 Fishery Policy and Planning Division
 Fisheries Department
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy
 Tel: (+39) 06 570 53951
 Fax: (+39) 06 0570 56500
 E-mail: marianne.guyonnet@fao.org

THORSELL Jenny (Ms)
 Secretariat Assistant
 c/o Fishery Policy and Planning Division
 Fisheries Department
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy

WESTERBERG Ulrika (Ms)
 Secretariat Assistant
 c/o Fishery Policy and Planning Division
 Fisheries Department
 FAO
 Viale delle Terme di Caracalla
 00100 Rome, Italy

INTERPRETERS/TRANSLATORS

CALVO, Elisa
 DIEZ, Cynthia
 SAENZ, Leticia
 SCHIELZETH, Rosa

APPENDIX C**LIST OF DOCUMENTS****Agenda**

Global Overview of IUU fishing and its impacts on national and regional efforts to manage fisheries sustainably: The rationale for the conclusion of the 2001 FAO International Plan of Action. (David J. Douman, FAO)

Flag State responsibility and the contribution of recent international instruments in preventing, deterring and eliminating IUU fishing. (Annick Van Houtte, FAO)

Fishing vessels operating under open registries and the exercise of flag State responsibilities: Information and options. (J. Swan, FAO Consultant)

Guidelines for the case studies

The Cook Islands – A case study. (Joshua Mitchell and Garth Broadhead)

Cyprus – A case study. (Gabriel Gabrielides)

Panama – A case study. (Arnulfo Franco)

International network for the cooperation and coordination of fisheries-related monitoring, control and surveillance activities. (Michele Kuruc)

GLOBAL OVERVIEW OF IUU FISHING AND ITS IMPACTS ON NATIONAL AND REGIONAL EFFORTS TO MANAGE FISHERIES SUSTAINABLY: THE RATIONALE FOR THE CONCLUSION OF THE 2001 FAO INTERNATIONAL PLAN OF ACTION

David J. Doullman¹

ABSTRACT

After a brief introduction, the paper outlines a number of issues fundamental to illegal, unreported and unregulated (IUU) fishing. A discussion of the international responses to IUU fishing follows, in terms of global action, responses by regional fishery management organizations or arrangements (RFMOs) and national initiatives to prevent, deter and eliminate IUU fishing. The next section focuses on the role of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU), discussing in particular the range of measures provided in the IPOA 'tool kit'. The final section of the paper draws conclusions and emphasises that all countries, including those that operate open registries must ensure that their flag vessels are properly authorized to fish and that effective flag State control must be exercised if the deleterious effects of IUU fishing are to be avoided.

INTRODUCTION

Illegal, unreported and unregulated (IUU) fishing is a major impediment to the achievement of long-term sustainable fisheries as called for, *inter alia*, in the 1992 Chapter 17 of Agenda 21,² the 1995 FAO Code of Conduct for Responsible Fisheries (Code of Conduct),³ the 2000 UN Millennium Development Goals⁴ and the 2002 Johannesburg Plan of Implementation.⁵

IUU fishers undermine national and regional efforts to implement management measures designed to promote responsible fisheries. This is a grave situation given that FAO estimated in 2002 that some 75 percent of world fisheries are already being fully exploited, overexploited or depleted.⁶ Where fish stocks are seriously depleted, IUU fishing will inhibit, if not prevent, the re-building of those stocks.

IUU fishing is a widespread problem that occurs in both marine and inland capture fisheries, irrespective of their location, species targeted, fishing gear employed or intensity of exploitation. Such fishing is not confined to any particular group of fishers, though experience shows that IUU fishing is widely practiced in fisheries – both within exclusive economic zones (EEZs) and on the high seas – where the prospects for apprehension are small relative to the gains to be made from such fishing, where penalties are insufficiently harsh to act as a deterrent and by fishers that operate vessels that are not subject to effective flag State control.⁷

¹ Senior Fishery Liaison Officer, International Institutions and Liaison Service, Fishery Policy and Planning Division, FAO, Rome, Italy. The views expressed in this paper are those of the author. They do not necessarily reflect the views of FAO or any of its Members. The author is indebted to Hiromoto Watanabe (FAO) and Judith Swan (FAO Consultant) for the use of their work on the resolutions adopted by regional fishery management organizations concerning IUU fishing and related issues.

² Adopted in 1992 by the United Nations Conference on Environment and Development (UNCED).

³ Adopted in 1995 by the Twenty-eighth Session of the FAO Conference.

⁴ Adopted in 2000 by the United Nations General Assembly at its Fifty-fifth Session.

⁵ Adopted in 2002 by the World Summit on Sustainable Development (WSSD).

⁶ FAO, 2002. The State of World Fisheries and Aquaculture.

⁷ Many countries, because of their limited means to implement effective measures in their EEZs to regulate legitimate and illegitimate fishing activities, are subject to re-occurring IUU fishing by both national and foreign fleets.

Within available resources and capacities, national fisheries administrations and regional fishery management organizations or arrangements (RFMOs) strive to implement measures to facilitate the responsible use of fish stocks. They do this to ensure that the livelihoods of fishers and fishing communities are not prejudiced, either now or in the future and that fisheries continue to make a significant contribution to food security and social and economic development. However, IUU fishing undermines these national and regional goals and management efforts. IUU fishers seek to make maximum short-term financial gains from their illicit activities at the expense of longer-term social, economic and biological objectives.

BOX 1: ORIGIN OF IUU FISHING TERMINOLOGY

IUU fishing is new fisheries terminology. It traces its origins to Sessions of Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) where it evolved from discussions concerning illegal and/or non CCAMLR-compliant fishing activities by Parties (illegal and unreported) and non-Parties (illegal and unregulated) in the Convention area.

The first mention of IUU fishing in a CCAMLR meeting agenda was in 1997 when it appeared as Agenda Item 1, Illegal, Unregulated and Unreported Fishing in the Convention Area, at the Seventh Session of the Standing Committee on Observation and Inspection. Shortly afterwards in the same year the item also appeared as Agenda Item 5, Illegal, Unreported and Unregulated Fishing in the Convention Area, at the Sixteenth Session of the Commission.

Since its initial use in 1997 the term IUU fishing has been used regularly at CCAMLR meetings, and it has subsequently been diffused into international fisheries discussions. In 1999, the terminology found its way in meeting reports of the Food and Agriculture Organization (FAO), the International Maritime Organization (IMO), the Commission on Sustainable Development (CSD), regional fishery management organizations and arrangements (RFMOs), and other fora.

REALITY OF IUU FISHING

IUU fishing is a real, re-occurring and increasing problem in the fisheries sector. The issue has been propelled to international prominence in the last five years with the recognition that it is more extensive and significant than had been believed. The inability to responsibly manage fish stocks that are subject to IUU fishing is a real issue and not the invention of an interest group that may wish to use IUU fishing to drive its own "agenda". In summary, IUU fishing:

- has many dimensions and motivations, through the most obvious motivations are those of a financial nature;
- requires that States exercise effective flag State control over their vessels, in accordance with international law, if the problem is to be deterred, prevented and eliminated. A consistent failure by countries to meet their international obligations with respect to the control of fishing vessels flying their flags is the major contributing factor to IUU fishing;⁸
- is exacerbated by the fishing activities of vessels from many "flag of convenience" or open registry countries because very often these vessels are not subject to effective flag State control;

⁸ To achieve more effective flag State control over fishing vessels, and to provide a more effective link between the flag and the vessel, it is essential that flag States provide authorizations for all vessels to fish, irrespective of whether this authorization is for operations in zones of national jurisdictions, exclusive economic zones (EEZs) of other countries, or on the high seas. However, in addition to this authorization by the flag State other supporting activities are required to ensure that vessels comply fully with the terms and conditions of their authorizations, that reporting is complete, accurate and timely and that unregulated fishing does not occur. This authorization to fish should be provided by the national fisheries administration of the flag State. This is essential to address IUU fishing in a substantive and front-on manner. In this connexion it has been reported that some States that operate open registries, as part of their efforts to promote responsible fisheries, now require fishing authorizations to be provided by their respective national fisheries administrations.

- disadvantages fishers who are good national and international citizens, who have proper authorizations to fish and who abide by the terms and conditions of their authorizations. This occurs because IUU fishers do not face the same constraints in terms of operating costs, catch restrictions, etc, nor do IUU fishers implement the same safety standards for fishing and support vessels and crews as is required by their counterparts who do not engage in IUU fishing;
- presents a serious moral consideration in that it contributes to food insecurity in some coastal and inland fishing communities that are heavily dependent on fish for food and revenue derived from the sale of fishing licences and fish exports;
- is, by its nature, virtually impossible to globally assess and quantify. However, catch and economic assessments by some RFMOs enable a global picture of the dimensions of the problem to be pieced together. As a consequence of these assessments it should be possible to consolidate a broader, though incomplete, perspective on IUU fishing across regions;⁹ and
- requires that countries and RFMOs adopt innovative measures to address the problems where flag State responsibility is poorly exercised or does not exist. These measures, viewed as 'secondary defences', represent a 'second-best approach' to dealing with IUU fishing.

A matter of concern with respect to IUU fishing is the age and capability of the fleet registered on open registries. It had been assumed, perhaps implicitly, that vessels re-flagging to these registries or switching to such registries to circumvent regionally agreed conservation and measures were old vessels, fully depreciated and nearing the end of their productive lives. However, recent fleet analysis by FAO shows, based on data available from Lloyds Maritime Information Services, that this is not the case. An increasing number of young and recently constructed vessels are moving to open registries. Consequently, the 'flag of convenience' fleet is not an old and aging fleet as had been thought previously. The European Commission, on this matter, has pointed out that fishing by 'flag of convenience' vessels represent a considerable threat to the survival of fisheries worldwide.¹⁰

The incidence and intensity of IUU fishing is functionally related to, and symptomatic of, a number of problems facing the management of fisheries. These problems must also be concurrently addressed and resolved if IUU fishing is to be prevented, deterred and eliminated. These problems include, *inter alia*:

- excess fleet capacity and the 'pushing out' and re-flagging of vessels from managed fisheries as regulations tighten to fisheries that are un- or poorly managed. This process may involve a migration of displaced fleet capacity from vessel registries in developed to developing countries;¹¹
- the payment of fisheries and fisheries-related subsidies where they have the effect of maintaining or increasing fleet capacity and masking of the real economic costs of vessel construction and fishing operations; and

⁹ With respect to the magnitude of IUU fishing it is believed that IUU fishing accounts for up to 50 percent of total catches in some important commercial fisheries; that IUU (black) landings account for 50 percent of total landings in some ports and, in the case of one RFMO, it has been estimated that IUU catches could be as high as three times the permitted catch level. These data, if accurate, have major consequences for national and regional stock assessments, and in turn, the determination of catch levels and other management measures adopted and implemented by countries and RFMOs.

¹⁰ Commission for the European Communities. 2002. Communication from the Commission: Community action plan for the eradication of illegal, unreported and unregulated fishing. European Commission, Brussels. 11p.

¹¹ This point was highlighted at the 2003 Twenty-fifth Session of the Committee on Fisheries. Some countries pointed out that IUU fishing, often by displaced vessels, undermines efforts to sustainably manage fisheries at both national and regional levels.

- ineffective fisheries monitoring, control and surveillance (MCS), inadequate sanctions and a lack of international cooperation to promote exchanges of information about IUU fishers.

In view of the seriousness of IUU fishing some governments are inclining to the view that such fishing is no longer a 'soft or administrative offence' and that fishers who operate in an illegal and unreported manner should be considered guilty of a more serious offence. This notion is being promulgated so that fishers who engage in certain types of IUU fishing should be subject to more severe sanctions and not be left to benefit from their illicit activities.

INTERNATIONAL RESPONSES TO IUU FISHING

Global action

FAO has been at the forefront of international efforts to address IUU fishing. The 1999 FAO Rome Declaration on the Implementation of the Code of Conduct for Responsible Fisheries (Rome Declaration)¹² states, *inter alia*, that countries would develop a global plan of action to deal effectively with all forms of IUU fishing including fishing vessels flying "flags of convenience".

This seminal Declaration set the international stage for action to prevent, deter and eliminate IUU fishing and provided the impetus and a framework for FAO to pursue a structured suite of activities relating to the elaboration of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).¹³

BOX 2: ELABORATION AND ADOPTION OF THE IPOA-IUU

The Twenty-third Session of the FAO Committee on Fisheries (COFI) in 1999, and subsequently the FAO Ministerial Meeting on Fisheries, gave FAO a clear mandate to develop a voluntary international plan of action (IPOA) to combat IUU fishing within the framework of the 1995 FAO Code of Conduct for Responsible Fisheries.

An Expert Consultation on IUU fishing was convened in May 2000 by the Government of Australia in cooperation with FAO. The experts prepared a preliminary draft IPOA. Subsequently, an FAO Technical Consultation on IUU Fishing was held in Rome in October 2000. Its purpose was to elaborate an IPOA to combat IUU fishing. A Second Technical Consultation was convened in February 2001 immediately prior to the Twenty-fourth Session of COFI. The IPOA-IUU was then adopted by consensus by COFI. The IPOA-IUU was endorsed by the Hundred and Twentieth Session of the FAO Council in June 2001.

Following the adoption of the Rome Declaration, growing international concern and impatience about IUU fishing led the issue to be addressed by United Nations General Assembly (UNGA). Indeed, since 2000 IUU fishing has been included each year in UNGA resolutions.¹⁴ These resolutions have, *inter alia*:

- condemned IUU fishing in all its forms;
- called on States to implement full and effective flag State control over vessels flying their flags;
- encouraged bilateral and regional cooperation to combat IUU fishing;

¹² Adopted in 1999 by the FAO Ministerial Meeting on Fisheries.

¹³ Given the serious nature of IUU fishing and its effects on undermining sustainable and responsible fisheries, FAO Members agreed that IUU fishing should be addressed by the FAO Conference at its Thirty-second Session in November/December 2003.

¹⁴ UNGA resolutions A/RES/55/7 (2000); A/RES/55/8 (2000); A/RES/56/12 (2001); A/RES/57/141 (2002), and A/RES/57/142 (2002).

- urged States to address IUU fishing and to implement the IPOA-IUU through the elaboration of national plans of action (NPOAs) by 2004, as called for in the IPOA-IUU; and
- encouraged the implementation of effective MCS and vessel monitoring systems (VMS) as a means of combating IUU fishing.

Within the ambit of the UNGA, IUU fishing has also been reviewed since 2000 by all sessions of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS). The reports of these meetings, which are forwarded to the UNGA for consideration, have noted, *inter alia*:

- IUU fishing presents an urgent and serious challenge to the international community if sustainable fisheries are to be achieved;
- the necessity to secure a global consensus on reversing declines in fish stocks and taking coordinated steps to address overfishing and the continuing problem of IUU fishing;
- the requirement for all States and RFMOs to take action to implement the IPOA-IUU;
- the need for effective flag State control if IUU fishing is to be combated;
- the importance of further examining and clarifying the role of the 'genuine link' in relation to the duty of flag States to exercise control over vessels flying their flags; and
- the role of port States in preventing, deterring and eliminating IUU fishing and encouraged FAO to continue its work in promoting port State measures to combat IUU fishing.¹⁵

With a sharp focus on fisheries issues and the need to secure sustainable outcomes in the fisheries sector as promulgated at the 1992 United Nations Conference on Environment and Development (UNCED),¹⁶ the 2002 World Summit on Sustainable Development (WSSD) addressed, *inter alia*, the scope and effects of IUU fishing. The Johannesburg Plan of Implementation, which also reflects certain decisions adopted by FAO Committee on Fisheries (COFI), called on States to implement the Code of Conduct and its related IPOAs and guidelines. Significantly, the Johannesburg Plan of Implementation urges that States take action to implement by 2004 national and, where appropriate, regional plans of action, to give effect to the IPOA-IUU.¹⁷

Regional responses

RFMOs are critical for the promotion of international cooperation in fisheries. It is through these organizations that countries come together and agree to be bound by decisions relating to the conservation and management of fish stocks. Some RFMOs have reported that IUU fishing in their convention areas by both party and non-party flag vessels is widespread and that such fishing handicaps their efforts to rationally manage fisheries. This is a vital issue because if RFMOs are not in a position to fulfil their mandates with respect to management, the outlook for the sustainable utilization of many of the world's major fish stocks is bleak.¹⁸

¹⁵ FAO, 2002, Report of the Expert Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. FAO, Rome, 22p.

¹⁶ Agenda 21 provides the principles and a programme of action for achieving sustainable development.

¹⁷ The Plan also specifies deadlines for five fisheries issues including: the development and implementation of national and regional plans of action to put into effect the IPOA for the management of fishing capacity by 2005; the establishment of representative networks of marine protected areas by 2012; the application of the ecosystem approach to fisheries by 2010; and the restoration of depleted stocks not later than 2015. To enhance the implementation of the IPOA-IUU and to reduce the incidence of IUU fishing and fishing fleet overcapacity, the Plan urges States to establish effective MCS systems for fishing vessels, including by flag States and to eliminate subsidies paid to the fishing industry that contribute to IUU fishing.

¹⁸ CCAMLR's Sixteenth Session's Report notes, *inter alia*, that " ... overfishing, illegal, unregulated and unreported constituted a most serious challenge to the reputation and credibility of CCAMLR as an intergovernmental organization for rational management of living marine resources on a sustainable basis. ..." Moreover, the report further noted that IUU

RFMOs and other regional fora have, in regular and special sessions, addressed IUU fishing and its effects on their efforts to sustainably manage mandated fish stocks.¹⁹ Many of these organizations, independent of the FAO-led process to develop an IPOA-IUU, have taken steps to combat IUU fishing. Regional measures to curb IUU fishing have focussed on several issues including:

- encouraging non-Members to become parties to their organizations;²⁰
- implementing new, and strengthen existing, policies, procedures and mandates;
- implement black or white lists of vessels with a view to gaining the greater cooperation of flag States;
- implementing market measures, primarily through catch documentation schemes that attempt to identify the origin of fish caught and influence its sale;²¹ and
- encouraging parties to strengthen their port measures so as to try to prevent the landing of fish taken by IUU fishers.

Such measures to combat IUU fishing have been adopted, individually or in combination, by many RFMOs. The number and distribution of organizations that have adopted anti IUU fishing reflects the global nature of the problem. IUU fishing occurs in all oceans and in different types of fisheries: IUU fishing is not, for example, only a problem in tuna fisheries.

RFMOs that have acted against IUU fishing include:

- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR);
- Commission for the Conservation of Southern Bluefin Tuna (CCSBT);
- Indian Ocean Tuna Commission (IOTC);
- Inter-American Tropical Tuna Commission (IATTC);
- International Convention for the Conservation of Atlantic Tunas (ICCAT);
- North Atlantic Salmon Conservation Organization (NASCO);
- North East Atlantic Fisheries Commission (NEAFC);
- Northwest Atlantic Fisheries Organization (NAFO); and
- Preparatory Commission for the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

A summary of the resolutions adopted by these RFMOs, which is impressive in terms of the number and scope, is in Appendix D.1. Other RFMOs are in the process of reviewing and taking stock of the impact of IUU fishing on their work. For example, the General Fisheries Commission for the Mediterranean (GFCM) will address IUU fishing in depth at its session in October 2003.

catches in the Commission's area exceeded reported fishing by a factor several times over and that more than half of the vessels presumed to engage in IUU fishing fly the flags of CCAMLR Members.

¹⁹ A recent FAO study noted that "IUU fishing was named by a number of RFBs as an important issue. Concern was expressed about the level of unreported catches" and extent and impact of IUU fishing. One RFB attributes the unreporting in its area of competence to the fact that the vessels concerned are flagged in open registry countries. However, under the threat of Port State control measures and trade documentation schemes, some of these countries are now cooperating with the Commission and providing some data. It is apparent that in most cases, however, they would most likely not apply management measures decided by the Commission." Swan, Judith. 2003. "Summary Information on the Role of International Fishery Organizations or Arrangements and Other Bodies Concerned with the Conservation and Management of Living Aquatic Resources". FAO Fisheries Circular No. 985. FAO, Rome. 114p.

²⁰ The issue of RFMOs accommodating new entrants should be substantively addressed as a means of minimizing the impact of IUU fishing by non parties on their work.

²¹ The purpose of these measures is to try to block or to make more difficult the sale of fish taken by IUU fishers.

BOX 3: STRENGTHENED ROLE FOR RFMOs^a

Measures that States might adopt through RFMOs to combat IUU fishing include:

- institutional strengthening;
- development of compliance measures;
- mandatory reporting;
- cooperation in the exchange of information;
- development and maintenance of records of fishing vessels;
- using trade information to monitor IUU fishing;
- MCS, boarding and inspection schemes and observer programmes;
- market-related measures;
- definition of circumstances in which vessels are deemed to have engaged in IUU fishing;
- education and public awareness programmes;
- development of NPOAs;
- examination of fishing vessel chartering arrangements;
- exchange of information on an annual basis among RFMOs;
- estimation of the extent, magnitude and character of IUU fishing in an RFMO convention area; and
- maintenance of records of vessels authorized to fish and records of vessels engaged in IUU fishing.

^a Paragraph 80 of the IPOA-IUU.

National Initiatives

In reporting to FAO in 2002 on their efforts to implement the Code of Conduct for Responsible Fisheries, 61 countries advised that IUU fishing is problematic and that it hampers efforts to achieve sustainable fisheries. Forty-seven countries indicated that they had taken steps towards developing NPOAs to try to curb IUU fishing and as a means of implementing the IPOA-IUU.

Countries also reported that IUU fishing occurs in all capture fisheries. However, the extent and full impact of IUU fishing is not well known. Countries further reported on the types of IUU fishing being encountered. These included:

- incursions (poaching) into EEZs and inshore areas by foreign fishing vessels which sometimes impact small-scale fishers;
- a lack of compliance by fishers with the terms of their fishing authorization;
- fishing by unauthorized vessels;
- unauthorized fishing in restricted areas;
- incomplete catch and effort reporting by industrial fleets;
- under-reporting of catches;
- the use of banned fishing gears;
- fishing with explosives and poisons, resulting in the non-selective destruction of resources; and
- use of dams for the illegal netting of fish in inland fisheries.

Twenty-three countries indicated that they would take steps in the near future to finalize their NPOAs. A further 18 countries advised that their NPOAs would be completed before the March 2005 deadline, as indicated in the IPOA-IUU.

BOX 4: CONTROL OVER NATIONALS^a

In the light of relevant provisions of the 1982 UN Convention, and without prejudice to the primary responsibility of the flag State on the high seas, each State should, to the greatest extent possible, take measures or cooperate to ensure that nationals subject to their jurisdiction do not support or engage in IUU fishing. All States should cooperate to identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing.

States should discourage their nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities.

^a Paragraphs 18 and 19 of the IPOA-IUU.

Some countries have already taken steps to strengthen national action against IUU fishing, despite not having already elaborated an NPOA. Some of these national measures reflect the measures taken by RFMOs to combat IUU fishing. National measures have included:

- revision of national fisheries and related legislation to close 'loopholes' that permit IUU fishing and related activities to take place, including provisions for tougher vessel licensing and the deregistration, decommissioning and scrapping of vessels that have engaged in IUU fishing. Some countries have opted to impose higher penalties and imprisonment terms for IUU fishers;
- acceptance and implementation of the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement and the implementation of the Code of Conduct for Responsible Fisheries. It has been noted that even where countries have not formally accepted, acceded to or ratified to these two legally binding instruments, in some instances their provisions have been implemented through policy changes and legislative revision;
- tightened flag State measures to ensure that vessels comply fully with national laws and, where appropriate, agreed regional arrangements, including enhanced national MCS;
- denial of port access to vessels known to have engaged in IUU fishing;²²
- de-registration of vessels where these vessels have been reported or convicted in a court of law for having engaged in IUU fishing;
- closure of markets through the prohibition of landings where fish has been taken outside agreed regional conservation and management arrangements;²³
- strengthen the functions of RFMOs;
- implementation of measures to give greater control over nationals working on fishing vessels of any flag State;
- implementation of measures against 'flag of convenience vessels';
- enhancement of MCS and the mandatory implementation of VMS, including improved fishing vessel observer programmes;

²² It was noted at the FAO/TMO Joint *Ad hoc* Working Group that port States can unilaterally exercise wide powers in their ports so long as these powers are exercised in a manner consistent with international law. It was also noted that this is one of the reasons why port State control is such an attractive option against IUU fishing. However, there must be national legislation in force to support actions taken by the port State so as to prevent legal challenges. For many States this legislative requirement is a weak link as States do not have the required legislation in place. See FAO, 2001. Report of the Joint FAO/TMO *Ad hoc* Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters. FAO Fisheries Report No. 637. FAO, Rome, 24p.

²³ The International Coalition of Fisheries Associations (ICFA) has urged the World Trade Organization (WTO) to support the use of trade measures as a means of encouraging compliance with global and regional fisheries conservation and management measures. ICFA maintains that trade measures can be very effective in discouraging and eliminating FOC fishing operations and IUU fishing.

- seizure and destruction of catches resulting from IUU fishing so that fishers do not benefit from their illegal activities;
- seizure and destruction of fishing gear used for IUU fishing;
- implementation of more comprehensive catch reporting; and
- building awareness among stakeholders, including fishers' associations, concerning the extent and detrimental effects of IUU fishing.

The strong global focus on IUU fishers and IUU fishing highlights the determined resolve to address the problem at all levels. A review of regional and national initiatives that are being implemented to deal with such fishing shows that the net is slowly tightening against those fishers who engage in illicit activities outside their authorizations. Secondary defences against IUU fishing will have an impact on reducing such fishing but the most effective means of preventing, deterring and eliminating IUU fishing would be for States to ensure that they meet their international obligations with respect to flag State control.

INTERNATIONAL PLAN OF ACTION

The IPOA-IUU's scope is broad and addresses IUU fishing in a holistic manner.²⁴ During the negotiation process it was recognized explicitly that a range of measures were necessary to deal effectively with IUU fishing.²⁵ However, it was further recognized that a degree of flexibility was also required in dealing with IUU fishing because IUU fishing differs among countries and regions and, as a result, not all the measures would be equally applicable. Consequently, a so-called 'tool box' approach was adopted so that countries could select those measures that were most relevant to their particular situations.

Not all the measures in the 'tool box' were easily agreed during the negotiation of the IPOA-IUU, and there was considerable compromise in reaching agreement on some of the 'tools'. However, all countries accepted that if IUU fishing is to be combated in an effective manner, more innovative and broader action than in the past is needed. In short, conventional measures and approaches were failing to prevent, deter and eliminate IUU fishing and its adverse impacts on fisheries conservation and management.

The implementation of the IPOA-IUU focuses primarily on six types of measures. Responsibility for implementation rests with governments and interested stakeholders, including industry, fishing communities and non-governmental organizations (NGOs), through the elaboration of NPOAs.²⁶

NPOAs should be developed as soon as possible but not later than 3 years after the adoption of the IPOA-IUU (i.e., March 2004).²⁷ To ensure that NPOAs continue to remain relevant and up-to date, the IPOA-IUU urges that, after their adoption, they should be reviewed periodically. Such a review process should enable countries to identify cost-effective strategies to increase the effectiveness of their plans and emerging issues.

²⁴ The purpose of the IPOA-IUU is to prevent, deter and eliminate IUU fishing by providing countries with a set of comprehensive, effective and transparent measures on the basis of which they may act either directly or through the relevant RFMOs.

²⁵ The IPOA-IUU was the fourth IPOA to be developed in FAO. One of the three IPOAs that had been adopted previously, the IPOA on fishing capacity, is particularly important and relevant, since it should reinforce the IPOA-IUU through reducing fleet capacity, lower fishing pressure on fish stocks, and reduce incentives for fishers to engage in irresponsible activities.

²⁶ FAO does not have an implementing and executing role in the IPOA-IUU. Rather, FAO's role is to support national and regional initiatives.

²⁷ FAO has prepared a technical guideline to assist countries on IPOA-IUU implementation

The measures designed to implement the IPOA-IUU are internally consistent and mutually reinforcing, and should be applied in accordance with international law. The measures are categorized as follows:

- **All States' responsibilities.** These measures are directed to all States irrespective of their role in the fisheries. States should:
 - accept and implement international fishery instruments;
 - adopt and/or implement national legislation that addresses all aspects of IUU fishing such as State control over nationals, vessels without nationality, sanctions, non-cooperating States, economic incentives, monitoring, control and surveillance;
 - adopt and/or implement national plans of action to combat IUU fishing;
 - facilitate cooperation with other States in matters relating to IUU fishing;
 - publicize measures being taken to address IUU fishing; and
 - make available the technical capacity and resources necessary to implement the IPOA.
- **Flag State responsibilities.** Flag States should ensure that their flag vessels do not engage in, or support, IUU fishing. To this end, flag States should ensure that they have:
 - a system of vessel registration;
 - a record of fishing vessels; and
 - an authorization to fish.

BOX 5: AUTHORIZATION TO FISH^a

States should adopt measures to ensure that no vessel be allowed to fish unless so authorized, in a manner consistent with international law for the high seas, in particular the rights and duties set out in articles 116 and 117 of the 1982 UN Convention, or in conformity with national legislation within areas of national jurisdiction.

A flag State should ensure that each of the vessels entitled to fly its flag fishing in waters outside its sovereignty or jurisdiction holds a valid authorization to fish issued by that flag State. Where a coastal State issues an authorization to fish to a vessel, that coastal State should ensure that no fishing in its waters occurs without an authorization to fish issued by the flag State of the vessel.

^a Paragraphs 44 and 45 of the IPOA-IUU.

- **Coastal State measures.** Coastal States should implement measures, in the exercise of their sovereign rights within their EEZs, to combat IUU fishing. For this purpose, coastal States should:
 - consider the implementation of effective MCS programmes;
 - enter into cooperation and exchange arrangements for data and information with other States;
 - ensure that vessels are authorized to fish and that they maintain catch logs;
 - ensure that at-sea transshipment and processing of fish are authorized or conducted in conformity with management regulations; and
 - avoid licensing vessels if they have a history of non-compliance and IUU fishing.
- **Port State measures.** Port States have an important supportive role to play in assisting flag States in fulfilling their obligations under international law. Measures adopted by port States should be fair, transparent and non-discriminatory and be framed in accordance with international law. These measures could involve:

- requiring prior notice for fishing vessels to enter ports;
- refusing the landing or transshipment of catch where there is clear evidence that a vessel granted entry to a port has engaged in IUU fishing;
- collecting specified information about a vessel that has been granted access and transmit it to the flag State and, where appropriate, to relevant RFMOs;
- reporting suspected IUU fishing activity to the flag State and relevant RFMOs;
- establishing and publicizing a national strategy on port State control of fishing and associated vessels; and
- cooperating with other States to develop, within relevant RFMOs, port State measures.

BOX 6: PORT STATE MEASURES^a

Where a port State has clear evidence that a vessel having been granted access to its ports has engaged in IUU fishing activity, the port State should not allow the vessel to land or transship fish in its ports, and should report the matter to the flag State of the vessel.

^a Paragraph 56 of the IPOA-IUU.

- **Internationally agreed market-related measures.** These measures, which represent an innovation in seeking to enhance fisheries conservation and management by reducing the incidence of IUU fishing, urge countries to:
 - prevent the importation of fish that has been identified to have been harvested by vessels engaged in IUU fishing;
 - cooperate to adopt multilaterally agreed trade-related measures, consistent with the principles, rights and obligations of the World Trade Organization (WTO), to prevent, deter and eliminate IUU fishing;
 - adopt multilateral catch-documentation and certification requirements as a means of reducing or eliminating trade in fish derived from IUU fishing;
 - improve the transparency of markets to allow traceability of fish; and
 - take steps to ensure that importers, transshippers, buyers, consumers, equipment suppliers, bankers, insurers, other service suppliers and the public are aware of the detrimental effects of doing business with vessels that are known to engage in IUU fishing. Likewise, fishers should be aware of the detrimental effects of doing business with these counterparts associated with IUU fishing.

BOX 7: MARKET-RELATED MEASURES^a

States should take all steps necessary, consistent with international law, to prevent fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing being traded or imported into their territories. The identification of the vessels by the regional fisheries management organization should be made through agreed procedures in a fair, transparent and non-discriminatory manner. Trade-related measures should be adopted and implemented in accordance with international law, including principles, rights and obligations established in WTO Agreements, and implemented in a fair, transparent and non-discriminatory manner. Unilateral trade-related measures should be avoided.

^a Paragraph 66 of the IPOA-IUU.

- **RFMOs.** RFMOs have a central role to play in combating IUU fishing. To enable RFMOs to effectively address this type of fishing, States should:
 - ensure compliance with, and enforcement of, policies and measures adopted in relation to IUU fishing by any RFMOs;

- give effect to the duty to cooperate by applying the conservation and management measures adopted by a RFMO, or by adopting measures consistent with those measures, and further ensure that flag vessels do not undermine such measures;
- through RFMOs, seek to strengthen and develop innovative ways to address IUU fishing;
- through RFMOs, compile and make available on a timely basis to other RFMOs and to FAO information relating to the prevention, deterrence and elimination of IUU fishing;
- encourage non-contracting parties with a real interest in the fishery to join RFMOs and to participate fully in their work; and
- through RFMOs, bring to the attention of another State instances where its flag vessels or nationals have engaged in activities that have affected the stocks subject to its mandate. If the matter is not rectified RFMO Members may agree to adopt appropriate measures.

CONCLUSION

IUU fishing flourishes primarily because countries fail to meet their obligations under international law with respect to flag State control. In a world where effective flag State control was exercised over fishing vessels the incidence of IUU fishing would be greatly reduced. However, many countries are not meeting their flag State obligations either because they are unable or unwilling to do so. This situation has necessitated that countries and RFMOs look beyond conventional solutions to combat IUU fishing and adopt and implement a wider and more innovative suite of measures. This was one of the fundamental reasons why FAO agreed to elaborate the IPOA-IUU. It has the potential to facilitate long-term sustainable fisheries. Reinforced by, and supportive of, other national and international fisheries instruments, the IPOA-IUU has the capacity to facilitate cooperative, concerted and targeted action at the root causes of IUU fishing.

Frustration and impatience with countries that do not exercise effective flag State control over their fishing vessels has led a growing number of countries to implement measures that hitherto were not considered necessary to secure sustainable fisheries. Viewed as 'secondary defences' these measures seek to promote compliance with the norms of behaviour considered necessary to achieve sustainable outcomes.

RFMOs are also moving to develop innovative approaches and schemes to prevent, deter and eliminate IUU fishing. These approaches and schemes mirror, in many cases, measures being adopted by countries. RFMOs and their members view them as being fundamental tools to combat IUU fishing.

The implementation of the IPOA-IUU is a challenge for countries, especially developing countries that often lack the necessary capacity and resources to implement such sophisticated international instruments. For all countries the implementation of the IPOA-IUU involves substantial additional cost. With reduced levels of IUU fishing and with more effective flag State control over fishing vessels, funds that are being used to combat IUU fishing could be used for more productive social and economic purposes.

The number of countries operating open registries and offering 'flags of convenience' to fishing vessels, often seemingly for limited financial return, is increasing.²⁸ Many of these countries are failing to:

²⁸ Swan, Judith. 2002. "Fishing Vessels Operating Under Open Registers and the Exercise of Flag State Responsibilities: Information and Options". FAO Fisheries Circular No. 980. FAO, Rome. 65p.

- ensure that the vessels they flag are properly authorized to fish; and
- exercise effective flag State control.

This is the crux of the IUU fishing problem. This lack of control over fishing vessels undermines responsible fisheries and therefore threatens the future of fisheries and the livelihoods of fishers and fishing communities. It further creates adverse publicity for all the countries that operate open registries, including those countries that offer a legitimate open registry service.

**RESOLUTIONS AND OTHER DECISIONS OF SOME REGIONAL FISHERY MANAGEMENT ORGANIZATIONS RELATING TO
ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING AND RELATED ACTIVITIES**

COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES (CCAMLR)	
Flagging and Licensing of Non-Contracting Party Vessels Resolution 13/XIX (2000)	This Resolution urges all Contracting Parties, consistent with their domestic legislation, to avoid flagging a non-Contracting Party vessel or licensing such a vessel to fish in waters under their fisheries jurisdiction, if that vessel has a history of IUU fishing in the Convention Area.
Catch Documentation Scheme: Implementation by Accessing States and Non-Contracting Parties Resolution 14/XIX (2000)	All Accessing States and non-Contracting Parties not participating in the Catch Documentation Scheme (CDS) which fish for, or trade in, <i>Dissostichus</i> spp. are urged to implement the Scheme as soon as possible, and the CCAMLR Secretariat and members are requested to make appropriate representations to such States and Parties. Commission members are reminded of their obligation under the CDS to prevent trade in <i>Dissostichus</i> spp. in their territory, or by their flag vessels, with Accessing States or non-Contracting Parties when it is not carried out in compliance with the Scheme. The issue will be continued to be reviewed.
Use of Ports not Implementing the Catch Documentation Scheme for <i>Dissostichus</i> spp. Resolution 15/XIX (2000)	This Resolution urges Contracting Parties: <ul style="list-style-type: none"> • not to use ports of Accessing States and non-Contracting Parties which are not implementing the CDS for <i>Dissostichus</i> spp., where they are unable to provide an authorised Flag State official(s) to monitor a landing; • to attach to the authorisation to fish a list of all Accessing States and non-Contracting Parties that are implementing the CDS.
Use of VMS and other Measures for the Verification of CDS Catch Data for Areas Outside the Convention Area, in particular, in FAO Statistical Area 51 Resolution 17/XX (2001)	Concerned that the Catch Documentation Scheme for <i>Dissostichus</i> spp. (CDS) could be used to disguise IUU catches of <i>Dissostichus</i> spp. in order to gain legal access to markets, this Resolution urges participating States to ensure that Dissostichus Catch Documents (DCDs) relating to landings or imports are checked to verify that the information is consistent with data reports derived from a Vessel Monitoring System (VMS). It urges States participating in the CDS to consider reviewing their domestic laws and regulations, with a view to prohibiting landings/transshipments/ imports of <i>Dissostichus</i> spp. if the Flag State fails to demonstrate that it verified the DCD using automated satellite-linked VMS derived data reports. It also requests the Scientific Committee to review relevant data outside the Convention Area to assist in the conservation and management of <i>Dissostichus</i> stocks and in defining the areas and potential biomasses which could be landed/imported/exported under the CDS.

<p>Flags of Non-Compliance Resolution 19/XXI (2002)</p>	<p>The Resolution refers to the lack of effective control over fishing vessels by some flag States, especially non-contracting Parties, leads to IUU catches of fish, and the practice of flagging or reflagging vessels as a means of avoiding compliance is among the factors that seriously undermine the effectiveness of conservation and management measures. Noting the IPOA-IUU, the Resolution urges all contracting and non-contracting parties to:</p> <ul style="list-style-type: none"> • take measures or cooperate to ensure that their nationals do not support or engage in IUU fishing, including engagement on board flag of non-compliance (FONC) vessels; • ensure full cooperation of relevant national agencies and industries in implementing CCAMLR measures; • develop ways to ensure that the export or transfer of fishing vessels from a FONC State is prohibited; • Prohibit the landings and transshipments of fish and fish products from FONC vessels.
<p>COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA (CCSBT)</p> <p>Action Plan Report of the Sixth Annual Meeting, Second Part, Attachment I (2000)</p> <p>Southern Bluefin Tuna Statistical Document Programme Decision of the Sixth Annual Meeting, Second Part Attachment J (2000)</p>	<p>The Resolution notes that a significant number of non-Party vessels are catching SBT, and refers to the strenuous efforts by Parties to encourage non-Parties to accede to the Convention or cooperate with the Commission, and to deter non-Party fishing which could adversely affect the objective of the Convention. It:</p> <ul style="list-style-type: none"> • requests non-members catching SBT to cooperate fully and advise it of actions taken; • calls for identification by the CCSBT non-member fishing that diminishes the effectiveness of conservation and management measures; • provides procedures for communicating with non-members to request them to rectify their fishing activities; • refers to the possibility that the Commission may decide to impose trade-restrict measures. <p>Subsequent meetings have agreed that there was value in preparing a list of IUU vessels and the Trade Information Scheme (TIS) would be used to assist in this respect.²⁹</p> <p>This decision provides for a Trade Information Scheme (TIS) requiring all SBT to be accompanied by a CCSBT Southern Bluefin Tuna Statistical Document for importation into the territory of a member. The Programme provides for:</p> <ul style="list-style-type: none"> • required information; • validation; • exchange of information; • record and reports; and • re-export. <p>Subsequent meetings have considered implementation of the TIS and its value for reducing IUU fishing activities.³⁰</p>

²⁹ e.g. Report of the Eighth Annual Meeting, 2001, paragraph 36.

³⁰ e.g. *Ibid.*, paragraph 56.

INDIAN OCEAN TUNA COMMISSION (IOTC)	
<p>Registration and Exchange of Information on Vessels, Including Flag of Convenience Vessels, Fishing for Tropical Tunas in the IOTC Area of Competence Recommendation 98/04 (1998)</p>	<p>This Recommendation requires Contracting Parties and cooperating non-Contracting Parties (CPCs):</p> <ul style="list-style-type: none"> to submit a list of their vessels greater than 24 meters that have fished during the previous year, with specified information. (This also applies to Contracting Parties that issue licences to foreign vessels in the Convention Area); to notify the Secretary of any information concerning fishing vessels not covered by the above but are presumed to be fishing for tropical tunas in the Area. <p>The Secretary must request the flag State of vessels presumed to be fishing for tropical tunas in the Area to take necessary measures to prevent the vessel from fishing.</p>
<p>Management of Fishing Capacity and the Reduction of the Catch of Juvenile Bigeye Tuna by Vessels, Including Flag of Convenience Vessels, Fishing for Tropical Tunas in the IOTC Area of Competence Recommendation 99/01 (1999)</p>	<p>This Recommendation recalls the IPOA-Capacity and notes that if the catch of bigeye tuna continues at high levels, the stock is likely to become overexploited. Very concerned that IUU fishing activities by large-scale tuna vessels have continued to increase, severely diminishing the potential effectiveness of IOTC conservation and management measures and impeding stock assessment, IOTC:</p> <ul style="list-style-type: none"> undertakes to adopt concerted actions to limit the fishing capacity of large-scale vessels fishing for tropical tunas to the appropriate level; engages to adopt at its session in 2000, a season and area closure of the use of floating objects in the Area of Competence on the basis of specified scientific advice; urges CPCs to fulfil their obligation concerning the transmission of the list of fishing vessels.
<p>Calling for Actions Against Fishing Activities by Large Scale Flag of Convenience Longline Vessels Recommendation 99/02 (1999)</p>	<p>This Recommendation expresses concern that fishing activities by large scale flag of convenience (FOC) tuna longline vessels in the IOTC Areas have continued and increased, and notes that many vessels have reflagged to avoid compliance with IOTC measures. Aware that most of the vessels are owned and operated by Taiwan Province of China (TPC) entities and almost all their products are being exported to Japan, the Resolution welcomes the development of the IPOA-IUU fishing including FOC. Further action to be taken by CPCs to deter FOC fishing activities is resolved, including:</p> <ul style="list-style-type: none"> ensuring that their flag vessels do not engage in IUU fishing (e.g. by means of denying licences); refusing port access to FOC vessels engaged in activities that diminish the effectiveness of IOTC measures; taking action consistent with relevant laws to: <ul style="list-style-type: none"> ➤ urge their importers, transporters and other concerned business people to refrain from transactions/shipments in tuna and tuna-like species caught by vessels carrying out FOC activities; ➤ urge manufacturers and business people to prevent their vessels and equipment/devices from being used for FOC operations; ➤ inform the general public; monitoring and exchange of information; repatriation or scrapping of FOC vessels undermining IOTC measures; instructing the IOTC Secretariat to prepare possible measures to prevent or eliminate FOC fishing activities, including restrictive trade measures.

<p>Support of the IPOA-IUU Plan Recommendation 01/07 (2001)</p>	<p>This Recommendation supports the IPOA-IUU, and calls for the identification to IOTC of vessels engaged in IUU activities through agreed procedures in a fair, transparent and non-discriminatory manner. IOTC should then establish the exchange of information on vessels engaged in or supporting IUU fishing, including trade information.</p>
<p>The Establishment of an IOTC Programme of Inspection in Port Recommendation 02/01 (2002)</p>	<p>This Recommendation notes that port inspection is a central element of a control and inspection programme, and that it can be, in particular, an effective tool to fight against IUU fishing. Measures taken in accordance with the IOTC Agreement are to take full account of the right and duty of the Port State in accordance with international law. More specifically, it:</p> <ul style="list-style-type: none"> • provides for port State inspections; • describes elements of and priorities for the inspection; • requires Contracting Parties to adopt regulations to prohibit landings and transshipments by non-Contracting Party vessels where it has been established that the catch has been taken in a manner which undermines the effectiveness of conservation and management measures adopted by the Commission; • requires the Port State to draw evidence of any violation of an IOTC measure to the attention of the flag State concerned and as appropriate the IOTC.
<p>On Establishing a List of Vessels Presumed to Have Carried Out Illegal, Unregulated and Unreported Fishing in the IOTC Area Recommendation 02/04 (2002)</p>	<p>Conscious of the need to address, as a matter of priority, the issue of large-scale fishing vessels conducting IUU fishing activities, this Recommendation sets evidentiary criteria for a presumption that fishing vessels flying the flag of a non-Contracting Party have carried out illegal, unregulated and unreported fishing activities in the IOTC Area. It:</p> <ul style="list-style-type: none"> • calls on CPCs to transmit to the Secretary annually a list of vessels flying the flag of a non-Contracting Party presumed to be carrying out IUU fishing activities in the IOTC Area during the current and previous year; • describes procedures, including consideration by the Compliance Committee, that lead to the adoption of a list of IUU fishing vessels; • describes measures to be taken against such vessels.
<p>The Establishment of an IOTC Record of Vessels over 24 metres Authorised to Operate in the IOTC Area Recommendation 02/05 (2002)</p>	<p>The IOTC notes that large-scale fishing vessels are highly mobile and easily change fishing grounds from one ocean to another, and have a high potential of operating in the IOTC area without timely registration with the Commission. Recalling that the IPOA-IUU stipulates that RFBs should take action to deal with IUU fishing and in particular to establish records of vessels authorized and records of vessels engaged in or supporting IUU fishing, the IOTC adopts the following:</p> <ul style="list-style-type: none"> • an IOTC Record of fishing vessels larger than 24 metres (large scale fishing vessels, or "LSFV") is to be established; • for the purposes of this Recommendation, LSFVs not entered into the Record are deemed not to be authorised to fish for, retain on board, tranship or land tuna and tuna-like species; • information to be submitted by CPCs; • measures CPCs must take to ensure compliance and prevent their flag vessels with a history of IUU fishing activities from fishing being included on the IOTC Record (unless there are new owners and evidence to the contrary); • measures CPCs must take to validate statistical information and ensure that species covered by Statistical Document Programs are accompanied by required documentation when imported by Contracting Party; • procedures where vessels not on the IOTC Record are fishing or transshipping tuna and tuna-like species in the IOTC Area.

<p>Measures to Prevent the Laundering of Catches by IUU Large-Scale Tuna Longline Fishing Vessels (LSTLFVs) Recommendation 02/07</p>	<p>Taking into account the need to implement the IPOA-IUU, and gravely concerned that a significant amount of catches by the IUU fishing vessels are believed to be transferred under the names of licensed fishing vessels, the IOTC recommends:</p> <ul style="list-style-type: none"> • CFCs should ensure that their licensed large-scale tuna longline fishing vessels (LSTLFVs) have prior authorization for at sea or in port transshipment and obtain the validated Statistical Document prior to transshipment; • CPCs should ensure transshipments are consistent with the reported catch amount and require transshipment reports; • CPCs that import tuna and tuna-like species caught by LSTLFVs should require transporters to ensure that Statistical Documents are issued prior to transshipment in their ports. Documents to be submitted directly after transshipment.
<p>INTER-AMERICAN TROPICAL TUNA COMMISSION (IATTC)</p>	
<p>Fishing by Vessels of non-Parties Resolution (2000)</p>	<p>The IATTC, referring to the principles of the Code of Conduct and the Compliance Agreement and addressing fishing by non-Parties, recommends to the High Contracting Parties that they:</p> <ul style="list-style-type: none"> • gather and exchange information on such fishing vessels that could undermine IATTC conservation and management measures; • request the Director to communicate with the flag State governments of such vessels and report to members so they may take appropriate measures.
<p>Regional Vessel Register Resolution (2000)</p>	<p>The IATTC, referring to the principles of the Code of Conduct and the Compliance Agreement and addressing the need for pertinent information relative to the fishing operations in the Eastern Pacific Ocean (EPO), recommends to the High Contracting Parties that they:</p> <ul style="list-style-type: none"> • request the Director to establish and maintain a record of vessels authorized to fish in the Convention area, on the basis of specified information and procedures; • request non-members with vessels fishing in the EPO to provide the specified information and follow the terms of the Resolution.
<p>Fishing by Vessels of non-Parties Resolution (2000)</p>	<p>This Resolution provides the conditions for not including a vessel in the Regional Vessel Register. The Director must:</p> <ul style="list-style-type: none"> • compile a list of vessels identified as fishing in the EPO that is not a flag vessel of a member or cooperating State; • communicate with the flag State requesting specific information; • report on the above matters to the Commission, which may then determine that a vessel may be placed on a list of non-cooperating vessels.
<p>Establishment of a List of Longline Fishing Vessels over 24 meters (LSTLFVs) Authorized to Operate in the Eastern Pacific Ocean Resolution C-03-07 (2003)</p>	<p>Recalling that the IPOA-IUU stipulates that RFBs should take action to deal with IUU fishing and in particular to establish records of vessels authorized and records of vessels engaged in or supporting IUU fishing, this Resolution establishes and sets requirements for a list of LSTLFVs over 24 meters authorized to fish in the EPO. It includes:</p> <ul style="list-style-type: none"> • information requirements; • procedures; • extensive duties of flag CPCs on the List, including taking measures relating to LSTLFVs on, and not on the list; • duties of the Director and the Commission.

<p>Attaining the Status of Cooperating Non-Party or Cooperating Fishing Entity to AIDCP and IATTC Resolution C-03-11 (2003)</p>	<p>This Resolution refers to the urgent need to develop criteria to establish the conditions under which the status of cooperating non-party of cooperating fishing entity is determined in AIDCP and IATTC, and sets the following requirements:</p> <ul style="list-style-type: none"> • information requirements; • compliance requirements; • participation at plenary and scientific meetings as observers.
<p>INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNA (ICCAT)</p>	
<p>Transshipments and Vessel Sightings Recommendation 97-11</p>	<p>This Resolution addresses the problem of stateless vessels that may threaten the integrity of ICCAT measures. Contracting Parties:</p> <ul style="list-style-type: none"> • must immediately report to ICCAT any sightings of vessels that appear to be without nationality that may be fishing for ICCAT species; • may board and inspect the vessel on the high seas where there are reasonable grounds to suspect it is stateless; • may, where evidence warrants, take action in accordance with international law • are encouraged to establish points of contact to facilitate cooperation and other appropriate actions.
<p>Unreported and Unregulated Catches of Tunas by Large-scale Longline Vessels in the Convention Area Resolution 96-18 (1998)</p>	<p>This Resolution recognizes that a large number of longline vessels were not reporting catches or respecting ICCAT conservation measures, and were transferring their flag to avoid trade restrictive measures. It specifies information the Commission is to request of certain importing countries in relation to such activities, in order that it can be reviewed with a view to adoption by the Commission of effective measures to prevent the vessels from continuing operations.</p>
<p>Calling for Further Actions against Illegal, Unregulated and Unreported Fishing Activities by Large Scale Longline Vessels in the Convention Area and Other Areas Resolution 99-11 (1999)</p>	<p>Concerned that IUU fishing activities by large scale tuna longline vessels in the Convention Area have continued and increased, and aware that many vessels are shifting their flag from Non-Contracting Parties to Contracting Parties, this Resolution also notes that most of the vessels are owned and operated by Chinese Taipei's business entities while almost all of their products are exported to Japan.</p> <p>The Resolution calls for parties, cooperating non-parties, entities or fishing entities to ensure that LSTLEVs do not carry out IUU fishing in the Convention Area and other Areas, and directs them to take every possible action to urge businesses to refrain from engaging in transshipments and transshipments of tuna and tuna-like species caught by vessels carrying out IUU fishing activities in the Convention Area and elsewhere.</p> <p>The Commission also praises and urges Chinese Taipei's effort to register Chinese Taipei built vessels engaged in IUU fishing and urges Japan to scrap Japan-built vessel engaged in IUU fishing activities in the Convention Area and elsewhere.</p>
<p>The Need for New Approaches to Deter Activities that Diminish the Effectiveness of ICCAT Conservation and Management Measures Resolution 99-12 (1999)</p>	<p>This Resolution expresses concern that despite the adoption of conservation and management measures, more than half of the major stocks of species continue to be at levels below that necessary to maintain maximum sustainable catch and most other stocks appear to be at or near full exploitation levels. Aware that flag States remain unable or unwilling to fulfil responsibilities in the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement, and convinced that new measures and approaches are needed beyond those already adopted, the Resolution:</p> <ul style="list-style-type: none"> • expresses the Commission's full endorsement of the FAO initiative to develop the IPOA-IUU; • calls upon Contracting Parties to become parties to the instruments; • encourages CPCs to participate in efforts called for in the IPOA-Capacity.

<p>To Enhance the Effectiveness of the ICCAT Measures to Eliminate Illegal, Unregulated and Unreported Fishing Activities by Large-scale Tuna Longline Vessels in the Convention Area and Other Areas</p> <p>Supplemental Resolution 00-19 (1999)</p>	<p>Concerned that a substantial number of owners of IUU LSTLFVs, most being Chinese Taipei's business entities, are still trying to continue IUU fishing by changing flag, vessel name and/or ownership, and that de-registered IUU vessels are trying to find new hosts, this Resolution:</p> <ul style="list-style-type: none"> • urges Japan and Japan and Chinese Taipei to take the necessary measures to complete the scrapping of IUU vessels built in Japan and the re-registration of IUU vessels built in Chinese Taipei and owned by its residents to Chinese Taipei registry; • requests contracting parties and others to intensify the actions in Resolution 99-11; and • requests Japan and Chinese Taipei to report any changes to relevant information.
<p>Further Defining the Scope of IUU Fishing</p> <p>Resolution 01-18 (2001)</p>	<p>Recognizing that the IPOA-IUU defines IUU fishing, the Resolution calls on all relevant parties to take every possible action to ensure concerned business people refrain from engaging in transaction and transshipment of tuna caught by IUU fishing vessels. This includes fishing not in compliance with relevant ICCAT conservation and management measures, in the Convention area or elsewhere.</p>
<p>More Effective Measures to Prevent, Deter and Eliminate IUU Fishing by Tuna Longline Vessels</p> <p>Resolution 01-19 (2001)</p>	<p>This Resolution addresses the problems in preparing a list of IUU fishing vessels from various trade data, including name and flag changes by vessels, and notes that a significant amount of IUU catch are believed to be transferred under the names of licensed vessels. A majority of the crew onboard the IUU tuna longline vessels are residents of the Contracting Parties and others associated with ICCAT.</p> <p>A working group meeting is called in 2002 to work out more effective measures to prevent, deter and eliminate IUU fishing, taking into account the IPOA-IUU. Terms of reference and follow-up for the meeting are set, and actions of the contracting parties and others are suggested.</p>
<p>A Management Standard for the Large-Sea Tuna Longline Fishery</p> <p>Resolution 01-20 (2001)</p>	<p>Recognizing the difficulty in control and management of LSTLFVs, due to their mobility between oceans, transfer of catches to the market without going through flag countries, shifting of flags to Contracting Parties with less management ability and changing vessel names and nominal owners, this Resolution encourages:</p> <ul style="list-style-type: none"> • CPCs to take provisional measures to meet specified minimum standards for licence issuance, and report to ICCAT on specified format, and • continuous review of the measures.

<p>Establishment of a List of Vessels Presumed to have Carried out IUU Fishing Activities in the ICCAT Convention Area Recommendation 02-23 (2002)</p>	<p>This recommendation recalls that the IPOA-IUU stipulates that the identification of the vessels carrying out IUU activities should follow agreed procedures and be applied in an equitable, transparent and non-discriminatory way. It recognises continued IUU activity especially by vessels that have been re-flagged to avoid compliance and evade ICCAT trade measures, and states determination to address this by way of countermeasures. The recommendation:</p> <ul style="list-style-type: none"> establishes evidentiary criteria for a presumption that IUU fishing has been carried out; requires CPCs to transmit annually to ICCAT a list of non-Contracting Party vessels presumed to be carrying out IUU activities in the Convention Area, and sets subsequent procedures by the Secretariat; provides measures that CPCs must take under their applicable legislation in respect of vessels on the IUU list, including refusing to grant their flag to listed vessels, encouraging importers, transporters and others to refrain from transaction and transshipment of tuna caught by listed vessels, and prohibiting: <ul style="list-style-type: none"> flag vessels from participating in transshipment with listed vessels; landings or transshipments from listed vessels voluntarily in ports; chartering listed vessels; and imports, landings, transshipments of tuna and tuna-like species from listed vessels. provides for publicity and dissemination of IUU list with other RFBs.
<p>Implementation of the Recommendation Concerning the ICCAT Record of Vessels Resolution 02-24 (2002)</p>	<p>The Resolution notes that despite the establishment of an ICCAT Record of Vessels over 24 meters authorized to operate in the Convention Area under Recommendation 02-22, a hundred LSTLFVs are believed to continue IUU fishing in the Convention Area and elsewhere, and identifies action to be taken:</p> <ul style="list-style-type: none"> by the Executive Secretary to identify newly listed vessels; by the Compliance Committee and Working Group to examine possible involvement of the remaining IUU vessels on the ICCAT Record
<p>Measures to Prevent the Laundering of Catches by Illegal, Unreported and Unregulated (IUU) Large-scale Tuna Longline Fishing Vessels Resolution 02-25 (2002)</p>	<p>Taking into account the need to implement the IPOA-IUU, concerned that a significant number of catches by IUU fishing vessels are believed to be transferred under the names of licensed vessels and building on previous recommendations to improve control over transshipments, this Resolution calls upon CPCs:</p> <ul style="list-style-type: none"> in respect of transshipments, to ensure that their licensed large-scale tuna longlining vessels have prior authorization and validated documentation, and that reports are made and validated; in respect of importing tuna and tuna-like species caught by large-scale tuna longlining vessels, to obligate transporters that intend to land such species in their port to submit required documentation prior to and immediately after the transshipment.
<p>Concerning Cooperative Actions to Eliminate Illegal, Unreported and Unregulated Fishing Activities by Large Scale Tuna Longline Vessels Resolution 02-26 (2002)</p>	<p>The Working Group formed by Resolution 01-19 encouraged collaborative work between Chinese Taipei and Japan to study further the involvement of the former's residents and licensed vessels in IUU fishing, and to work out effective measures to prevent such involvement.</p> <p>This Resolution encourages such collaboration, and urges:</p> <ul style="list-style-type: none"> Japan to work closely with the flag States of LSTLFVs, and implement the 2002 ICCAT Recommendation to establish a Record of Vessels over 24 meters authorised to operate in the Convention Area; Chinese Taipei to consider appropriate domestic legislation to improve its control its residents that invest in or otherwise support or engage in IUU fishing; Contracting Parties and others associated with ICCAT to urge their residents from engaging in or associating with activities that support IUU fishing.

<p>Regarding Process and Criteria for ICCAT IUU Trade Restrictive Measures Resolution 02-27 (2002)</p>	<p>Recognising the desirability of implementing the IPOA-IUU, and the range of valuable tools already developed by ICCAT for doing so, this Resolution:</p> <ul style="list-style-type: none"> calls for a Working Group to develop criteria and a process for the fair, transparent and consistent application of ICCAT measures, including trade restrictive measures, to prevent, deter and eliminate IUU fishing; and specifies terms of reference and minimum documentation to be considered.
<p>NORTH ATLANTIC SALMON CONSERVATION ORGANIZATION (NASCO)</p>	
<p>Fishing for Salmon on the High Seas Resolution CNL (92)54 (1992)</p>	<p>Taking into account the United Nations Convention on the Law of the Sea, NASCO's prohibition on high seas fishing and non-parties fishing for salmon on the high seas despite appeals by NASCO to cease fishing activities, this Resolution calls for:</p> <ul style="list-style-type: none"> measures to encourage non-contracting parties to sign and comply with the NASCO Protocol; encourages the Contracting Parties to report sightings of high seas fishing activities that may undermine NASCO's conservation measures; requests NASCO to take a number of measures, including collection, compilation and dissemination of relevant information.
<p>NORTH EAST ATLANTIC FISHERIES COMMISSION (NEAFC)</p>	
<p>Scheme to Promote Compliance by Non-Contracting Party Vessels with Recommendations Established by NEAFC Recommendation (1998)</p>	<p>The Recommendation is directed at non-Contracting Party vessels engaged in fishing activities in areas beyond national jurisdiction in the high seas in the Convention Area ("the Regulatory Area"), and:</p> <ul style="list-style-type: none"> creates a presumption that a non-Contracting Party vessel sighted in the Regulatory Area engaging in fishing activities is undermining the effectiveness of NEAFC Recommendations (it also applies to other vessels involved in transshipment with such vessels, inside or outside the Regulatory Area); provides procedures for the transmission of information, boarding and inspection, port inspection, prohibition of landings and transshipments, reports and evidence.
<p>NORTHWEST ATLANTIC FISHERIES ORGANIZATION (NAFO)</p>	
<p>Scheme to Promote Compliance by non-Contracting Party Vessels with the Conservation and Enforcement Measures Established by NAFO NAFO/CX Doc. 97/6</p>	<p>Acknowledging the rights, duties and obligations of States whose vessels fish on the high seas expressed in the 1982 UN Convention, the 1995 UN Fish Stocks Agreement, the 1993 FAO Compliance Agreement and general principles of international law, this document:</p> <ul style="list-style-type: none"> establishes a presumption that non-contracting party vessels engaged in fishing activities in the NAFO Regulatory Area are undermining the effectiveness of NAFO Conservation and Enforcement Measures, and applies the presumption to any other non-contracting party vessels which has engaged in transshipment activities with such vessels inside or outside the Regulatory Area; sets out procedures for information and reports relating to sightings of the above; sets out procedures for boardings and inspections; requires contracting parties to ensure their vessels do not receive transshipments of fish from such vessels; sets out procedures for review of the Scheme.

WESTERN CENTRAL PACIFIC FISHERIES COMMISSION (WCPFC)	
Resolution of the Preparatory Conference relating to Illegal, Unreported and Unregulated Fishing and Limits on Fishing Capacity 2002	<p>Noting a number of international instruments, including the IPOA-IUU, that fishing capacity has continued to increase in the region since 1999 and the potential redeployment of IUU vessels from other regions into the Convention Area, the Resolution:</p> <ul style="list-style-type: none"> urges States and other entities to exercise reasonable restraint in respect of any expansion of fishing effort and capacity in the Convention Area and to apply the precautionary approach forthwith; urges States and other entities concerned to take every appropriate measure to prevent, deter and eliminate IUU fishing in the Convention Area; promotes cooperation in exchanging information on the IUU fishing activities and other activities that might undermine the effectiveness of the Resolution.

FLAG STATE RESPONSIBILITY AND THE CONTRIBUTION OF RECENT INTERNATIONAL INSTRUMENTS IN PREVENTING, DETERRING AND ELIMINATING IUU FISHING

Annick Van Houtte¹

ABSTRACT

The present paper looks into how recent international fisheries instruments have addressed illegal, unreported and unregulated (IUU) fishing with a particular focus on flag State responsibility, including flag State duties. A number of States, while accepting the rights linked to the granting of nationality, have not accepted their correlative obligations. In the high seas fisheries context, a number of States have shown themselves to be either unwilling or unable to exercise their flag State jurisdiction in a manner consistent with their duties under the 1982 United Nations Convention on the Law of the Sea (1982 UN Convention), and other applicable international fisheries instruments. The link between a vessel and a flag remains a primary link, but international law appears to sidestep the issue of "genuine" link. Instead, the concept of flag State responsibility, including in particular the obligation of effective control by a flag State over fishing vessels flying its flag, is underscored. If the international fisheries instruments adopted in various fora are not widely implemented, the problems identified at the root of IUU fishing will remain.

SETTING THE SCENE

States have, over the last twenty years, given greater weight to the concept of flag State responsibility for compliance control over fishing vessels.

The terminology "IUU-fishing" was initiated in the context of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) in light of some major problems it was facing. IUU catches in the Commission's area were exceeding reported fishing "*by a factor several times over and ... more than half the vessels presumed to engage in IUU fishing fly the flags of CCAMLR Member States*"² The Rome Declaration on the Code of Conduct for Responsible Fisheries which was adopted by the 1999 FAO Ministerial Meeting on Fisheries expressed concern at the growing amount of IUU fishing activities being carried out, including by vessels flying "flags of convenience". Problems caused by IUU fishing activities, including fishing by vessels flying "flags of convenience" and the consequent undermining of conservation and management measures in fisheries, were further dealt with in various fora including the United Nations (UN), the Food and Agriculture Organization of the United Nations (FAO) and the International Maritime Organization (IMO).

The terms "illegal fishing", "unreported fishing" and "unregulated fishing" are defined in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU), and appear in Appendix E.1. However it should be noted that the text of the IPOA always refers to IUU fishing without necessarily distinguishing between its various components. Hence the scope is very broad and reflects the nature of the problem in the area of fisheries.³ The definition embraces, generally speaking: fishing activities which contravene or undermine conservation and management measures in any marine area, the failure to fully and accurately meet

¹ Legal Officer, Development Law Service, Legal Office, FAO, Rome, Italy.

² <http://www.affa.gov.au/ceol/news/papers.html>; AUS-IUU/2000-4.

³ See Edeson, The International Plan of Action on Illegal, Unreported and Unregulated Fishing: Legal Context of a Non-Legally Binding Instrument, DMCL, Vol. 16, No. 4, 2001.

fishery and fishing vessel data collection and reporting requirements, the absence of effective exercise of the required jurisdiction or control over vessels and nationals.

The issue of "flags of convenience" is not new. The expressions "flag of convenience" or "open registry" States often refer to States that permit foreign vessel owners having no real connection with those States to register their vessels under the flags of those States. Low fees, tax exemptions, lower crew costs and financial savings for not having to comply with international safety standards have made registration in these States attractive. Open registry States may lack the will or capacity to exercise effective jurisdiction in matters of vessel safety, pollution control and, last but not least, fisheries control. It is convenient to note that the matter of a link between those States and the vessels is of less importance than the matter of the willingness of those States to exercise effective control and jurisdiction over vessels after having granted registration.

Article 91 of the 1982 UN Convention accords each State exclusive jurisdiction over the granting of its nationality to ships. These matters are regulated by a State in its domestic law.⁴ The same Article states that "*There must exist a genuine link between the State and the ship.*" The issue of the "genuine" link has a long history; it arose prior to the Geneva Convention on the High Seas, 1958 and is still causing problems today. A State grants nationality to a vessel usually by means of registration and by authorising a vessel to fly its flag.⁵ A vessel flying two or more flags is regarded as having no nationality.⁶

The acquisition by a vessel of the nationality of a State generates legal rights and obligations for both the vessel and the flag State. A vessel derives its rights and obligations from the State whose flag it flies and whose nationality it accordingly bears. Under the 1982 UN Convention, this allows such a vessel to benefit from freedom of navigation.⁷ It also confers on the State of nationality (and exceptionally to other States) responsibility for effectively exercising jurisdiction and control over the vessel in administrative, technical and social matters.⁸ In other words, the nationality of a vessel indicates which State is to exercise flag State jurisdiction. Finally, the nationality creates a regime of flag State responsibility in international law in relation to its obligations vis-à-vis other States.

This paper does not intend to deal with freedom of navigation. Rather it intends, as the title suggests, to look into how recent international fisheries instruments have addressed IUU fishing with a particular focus on flag State responsibility. A number of States, while accepting the rights linked to the granting of nationality, have not accepted their correlative obligations of performance. In the context of high seas fisheries, a number of States have shown themselves to be either unwilling or unable to exercise their flag State jurisdiction in a manner consistent with Article 117 of the 1982 UN Convention, which provides that all States have the duty to take, or to co-operate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

⁴ "MV Saiga" No. 2, International Tribunal of the Law of the Sea, 1999, para 63.

⁵ For the purposes of this paper the author considers the expressions "State of registration" and the "flag State" as synonyms for the State whose nationality the vessel bears. The High Seas Convention (Art. 5(1)), the 1982 UN Convention, (Art. 91) and the UN Convention on Conditions for Registration of Ships (Art. 4(2)) consider the flag State and State of nationality as synonymous and the last convention treats flag State and State of registration as generally being identical. (see Arts. 4 and 11). In the "MV Saiga" No. 2 case the International Tribunal of the Law of the Sea confirmed that Article 91 accords each State exclusive jurisdiction over granting of its nationality to ships. It held that these matters are regulated by a State in its domestic law (para. 63).

⁶ High Seas Convention, Art. 6, 1982 UN Convention, Art. 92(2).

⁷ See Art. 87 1982 UN Convention. It should be noted that ships of foreign vessels normally enjoy different navigational rights in the various zones of coastal States and on the high seas.

⁸ Art. 94, "Duties of the Flag State".

FLAG STATE RESPONSIBILITY IN THE FISHERIES CONTEXT

The concept of flag State responsibility in the fisheries context has its origins in various bilateral agreements regarding the granting of licences to fish (fisheries access) within coastal States' exclusive economic zones (EEZs) that were concluded in the late 1970s and throughout the 1980s between coastal States (often developing States) on the one hand and major fishing nations on the other hand. Flag States were under the obligation to ensure that vessels flying their flags would act in accordance with the terms of the agreement (*pacta sunt servanda*). The concept appeared for the first time in a regional fisheries access agreement in 1987: the Treaty on Fisheries between Governments of certain Pacific Island States and the Government of the United States of America.⁹ Article 4 formulates the basic concept of flag State responsibility and was followed by a set of provisions giving effect to such flag State responsibility. These provisions referred, *inter alia*, to procedures that the flag State – in this case the United States of America – must follow for investigating offences against the Treaty and the laws of the Pacific Island States, including the imposition of penalties and ensuring payment of fines collected from violators through its domestic procedures to Pacific Island States. The concept of flag State responsibility remained limited to fisheries that were conducted within the scope of the agreement to which the flag State is a party and to "zones under sovereign rights" of coastal States and the parties to the Treaty. The 1992 Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific region ensured the concept of flag State responsibility in fisheries access agreements. It required the parties to "ensure that foreign fishing agreements with flag States require the flag State to take responsibility for the compliance by its flag vessels with the terms of any agreement and applicable laws".¹⁰

Agenda 21, Chapter 17, took the concept of flag State responsibility in the fisheries context further: it included responsibility on the high seas, independently of a specific agreement to which a flag State is party and in the context of the sustainable use of fisheries resources. This "extension" to the high seas found its legal basis in the 1982 UN Convention, especially Article 94 ("Duties of the Flag State") and Articles 116-120 (Part VII, section 2, "Conservation and management of living resources of the high seas"). Agenda 21, Chapter 17 reflected widespread concern that the provisions of the 1982 UN Convention on high seas fishing were in need of strengthening. The concept was further developed in a global context under the 1993 FAO Compliance Agreement¹¹ where the flag State is required to undertake those steps necessary in order to ensure that fishing vessels operating under its flag do not engage in activities that undermine the effectiveness of international conservation and management measures.¹² In many respects, the UN Fish Stocks Agreement under the title "Duties of the Flag State" maintains the basic concept developed in the FAO Compliance Agreement. The former outlines specific obligations to which a flag State must agree and implement before its nationals are permitted to fish on the high seas and in areas managed by regional fisheries bodies. The FAO Compliance Agreement and the UN Fish Stocks Agreement are supplemented by the FAO Code of Conduct for Responsible Fisheries, which is a voluntary Code adopted by the FAO Conference in Resolution 4 of 1995.

Finally, other efforts taken to address the growing concern of IUU fishing activities since 1999 have bolstered the importance of the concept of flag State responsibility. General Assembly Resolution 54/32 called on States not to permit vessels flying their flags to engage in fishing on the high seas without having effective control over their activities and to take specific measures to control fishing vessels flying their flags. It also called upon IMO, in cooperation with FAO, regional fishery

⁹ 26 International Legal Materials, 1053.

¹⁰ Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (1992): Art. IV (5).

¹¹ FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas.

¹² FAO Compliance Agreement, Article III. Moore, G., "Enforcement without force: New Techniques in Compliance Control for Foreign Fishing Operations based on Regional Cooperation", *Ocean Development and International Law*, 24 (1993).

bodies and arrangements and other relevant organisations, in consultation with States and entities, to define the concept of the genuine link between the fishing vessel and the State in order to assist in the implementation of the UN Fish Stocks Agreement.

IMO's Marine Environment Protection Committee (MEPC), at its 44th session in March 2000, and Maritime Safety Committee (MSC), at its 72nd session in May 2000, considered providing assistance to FAO in dealing with IUU fishing in respect of the safety of, and prevention of marine pollution from, fishing vessels and other related issues, as requested by the UN General Assembly and the Commission on Sustainable Development (CSD). Both Committees agreed to the establishment of a Joint FAO/IMO ad hoc Working Group (JWG) on IUU Fishing and Related Matters. A relevant new item on "Illegal, unregulated and unreported (IUU) fishing and related matters" was included in the agenda and work programme of IMO's Sub-Committee on Flag State Implementation (FSI). It is worth noting that most fishing vessels are not covered by IMO conventions for a number of reasons: many IMO instruments specifically exclude fishing vessels; the vessels are below the size limits of the instruments; or the flag States are not Party to the relevant instruments.

The World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa, 2-4 September 2002, reflects and strengthens the concepts found in the 1992 Rio Declaration of Principles and reaffirms the commitment to sustainable development. Under the Johannesburg Plan of Implementation,¹³ oceans and fisheries are considered primarily under the general chapeau of "Chapter IV on the Management of the Natural Resource Base". The putting into effect of the IPOA on IUU by 2004 and the IPOA for the Management of Fishing Capacity by 2005 is particularly urged. A number of special issues are addressed, including the need for the development of effective monitoring, reporting and enforcement, for control of fishing vessels, "including by flag States".

Finally, the oil tanker accidents, most notably those involving the *Erika* in December 1999 and the *Prestige* in November 2002 have highlighted the need to thoroughly investigate the problems caused by inadequate, or even non-existent, flag State implementation and enforcement of their international legal obligations. The Secretary General decided recently that it was time to address in a comprehensive and coordinated manner among different international organizations within and outside the UN the issues of ship registration, the lack of a "genuine link" between a vessel and the State of registration, and the lack of adequate implementation and enforcement by certain flag States. A special inter-agency task force was convened to this effect in May 2003 to produce recommendations for future action.

The 1982 UN Convention

The effective exercise of flag State jurisdiction is dealt with by Article 94 of the 1982 UN Convention. The legal link of nationality which exists between a State and a vessel flying its flag generates obligations for the flag State. *"Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag."*

Every State needs to address a number of matters described in Article 94 of the 1982 UN Convention. These duties in administrative, technical and social matters do not relate specifically to fisheries but have over the past decade been extended to fisheries matters allowing as such for the development of "new" powers of "police" on high seas through recent international developments. Article 94(2) of the 1982 UN Convention requires a flag State to maintain a register of ships flying its flag. Such register must contain elements and information facilitating the identification of a ship flying its flag. It further requires a flag State to assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.¹⁴ Moreover a flag State must take all necessary measures to ensure safety

¹³ The full text is available on the official website: www.johannesburgsummit.org.

¹⁴ Art. 94 of the 1982 UN Convention.

at sea in conformity with generally accepted international regulations, procedures and practices. To fulfil its mandate a flag State may be assisted by other States either based on a report of the latter¹⁵ or upon request¹⁶.

It is worth reporting here the conclusions of the International Tribunal of the Law of the Sea (ITLOS) with respect to Articles 91 and 94 of the 1982 UN Convention in the “MV Saiga” No 2 case:

“...the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States.” (paragraph 83)

The provisions of Article 94 of the 1982 UN Convention evidence that fishery matters were not really a concern for States when that Convention was being drafted. As we will see in the following sections, the FAO Compliance Agreement and the UN Fish Stocks Agreement have further elaborated Article 94. More specifically with respect to fisheries, the jurisdiction and responsibility of a flag State varies according to whether a vessel flying its flag is:

- in an area under the jurisdiction of the flag State;
- on the high seas; or
- in an area under the jurisdiction of a State other than the flag State, including a port.

In the first case, the flag State will have exclusive jurisdiction over the fishing vessel and the responsibility to control its fishing activities. In the second case, the flag State traditionally has exclusive responsibility for controlling the fishing activities of the vessel. However, with the adoption of a number of international fisheries instruments including the UN Fish Stocks Agreement, States other than the flag State have certain rights with respect to fishing vessels on the high seas. The flag State continues to have responsibilities with respect to fishing activities when its fishing vessel is fishing in the waters under jurisdiction of a State other than a flag State, including the responsibility to ensure that the vessel does not undertake unauthorized fishing.

Under Article 117 of the 1982 UN Convention, all States are required to take measures for their nationals as may be necessary for the conservation of living resources on the high seas. The 1982 UN Convention is silent on the types of measures that a flag State is to adopt for its fishing vessels which are undertaking fishing activities on the high seas. Reference is only made to the need to take into consideration the interdependency of the stock and the obligation to take measures to apply the principle of maximum sustainable yield (MSY) for the purposes of restoring or maintaining fish stocks.

The FAO Compliance Agreement and flag State responsibility

The 1993 FAO Compliance Agreement was adopted by the Conference of the Food and Agriculture Organization in November 1993 and entered into force on 24 April 2003, upon receipt of the twenty-fifth instrument of acceptance. It forms an integral part of the Code of Conduct. In line with Article 117 of the 1982 UN Convention, the Agreement is based on the recognition that all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

The Agreement attempts to prevent re-flagging of vessels to avoid being bound by high seas conservation and management measures adopted by regional fisheries organizations. Its general objective, as the title suggests, is “to promote compliance” with agreed fishery conservation rules. The

¹⁵ Art. 94 (6) of the 1982 UN Convention.

¹⁶ Art. 94 (7) and Art. 108(2) of the 1982 UN Convention.

primary focus of the FAO Compliance Agreement is flag State responsibility in the authorization to fish on the high seas as well as increased transparency through exchange of information.¹⁷

Article III is the most important clause in the Agreement, for it sets out the responsibility of the flag State in respect of fishing vessels operating on the high seas¹⁸ and elaborates a number of obligations for parties whose fishing vessels operate on the high seas. These fundamental obligations are very relevant in the context of IUU fishing activities.

In essence, the Article places first an obligation on the flag State, whether or not a member of a RFMO that has adopted international conservation and management measures, to take "*such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures*".¹⁹ Second, it continues: "*In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization*".²⁰ Thirdly, no Party to the Agreement shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities in respect of the vessel.²¹

Further duties are imposed to give content to these basic obligations, including provisions concerning: non- authorization of a vessel still under a suspension procedure,²² the requirement that vessels be marked so as to be readily identified in accordance with generally accepted standards, such as the FAO vessel marking scheme,²³ the requirement of information on the operations of a vessel,²⁴ and the imposition of sanctions of sufficient gravity as to be effective in securing compliance with requirements of the Agreement.²⁵

Another pillar of the Agreement is laid down in those provisions ensuring the appropriate flow of information on activities of the high seas fishing vessels. These are Articles IV and VI. Under Article IV, flag States are required to maintain a record of fishing vessels which have been duly authorized for fishing on the high seas and to take such measures as are necessary to ensure that all such vessels are entered on that record. On the other hand, pursuant to Article VI, such information has to be made available to FAO on a real time basis by the flag State. In turn, FAO shall circulate periodically the information provided to all Parties, and, on request, individually to any Party.

The Agreement calls also for collective actions and amongst the matters referred to are the exchange of information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those vessels flying its flag reported to have engaged in activities undermining the effectiveness of conservation and management measures.

¹⁷ Flag state responsibility is regulated in Article III of the FAO Compliance Agreement.

¹⁸ The concept of the responsibility of the flag State for the activities of its fishing vessels was put forward in the World Fisheries Strategy adopted by FAO World Conference on Fisheries Management and Development held in Rome in 1984. See Paragraph 14 (XVII) of Part III of the Strategy for Fisheries Management and Development - Principles and practices for the rational management and optimal use of fish resources, which reads as follows: "Where access is granted to foreign fishing vessels, the flag States themselves should take measures to ensure compliance with the terms of access agreements and with coastal States fisheries laws and regulations; Coastal States should consider including provisions to this effect in bilateral access agreements. See Report of the FAO World Conference on Fisheries Management and Development, FAO, Rome, 1984.

The concept of flag State responsibility is also contemplated in Article 94 of the 1982 Convention on the Law of the Sea.

¹⁹ Article III, 1 (a) of the FAO Compliance Agreement.

²⁰ Article III 2 of the FAO Compliance Agreement.

²¹ Article III 3 *ibid.*

²² Article III 5 *ibid.*

²³ Article III 6 *ibid.*

²⁴ Article III 7 *ibid.*

²⁵ Article III 8 *ibid.*

The Agreement aims at preventing and combating in particular illegal and unregulated fisheries on the high seas. Flag States have to control and survey the activities of their fishing vessels on the high seas, have to consider on a case-by-case basis whether or not to grant an authorisation and, most importantly, they should not grant an authorisation unless they are able to deter and prevent their vessels from undermining international conservation measures. A principal benefit to a flag State will also come from the availability of reliable information regarding vessels authorized to fish on the high seas, which can lead to an increased ability to identify those vessels fishing without authorization on the high seas. This will be even more important in the context of global, regional or sub-regional fisheries organizations or arrangements and the sub-regional and regional on-going efforts to operate lists of IUU fishing vessels.

Notably, the criterion of a "genuine" link referred to in Article 91 of the 1982 UN Convention, in the high seas fishing context, is not given any definition. The "link" referred to in Article III(3) of the FAO Compliance Agreement is put in terms of the ability of a State to exercise effective control in respect of its vessels. The Agreement leaves it up to the Parties to determine what kind of link vessels ought to have to the flag State and then to set this out in legislation.

An attempt to prevent vessels to "hop and shop" for flags from other States is provided for in the Agreement in Article III (5), which obliges State parties not to authorize a fishing vessel previously registered in another State Party under specific circumstances.

The UN Fish Stocks Agreement and flag State responsibility

The 1995 UN Fish Stocks Agreement is intended, *inter alia*, to address high seas fishing and give practical effect to the provisions of Articles 63 and 64 of the 1982 UN Convention which deal with straddling stocks and highly migratory species. The Agreement was adopted in New York in December 1995 and entered into force in 2001.

In general, the UN Fish Stocks Agreement applies to straddling stocks and highly migratory species "beyond areas under national jurisdiction". So, except as specified, the UN Fish Stocks Agreement does not apply to non-straddling, non-highly migratory stocks and does not apply to any stocks within areas under national jurisdiction.

Articles 18, 19 and 20 refer to the duties of the flag State that are party to the Agreement with respect to their vessels fishing on the high seas, apparently not uniquely for straddling fish stocks and highly migratory fish stocks. The basic concept of flag State responsibility over vessels fishing on the high seas is maintained: Flag States are to ensure that the vessels flying their flags and fishing on the high seas, comply with sub-regional and regional conservation and management measures and do not undermine the effectiveness of those measures. Flag States are not to authorize their vessels to fish on the high seas unless they are sure that they are able to exercise their responsibilities in accordance with the 1995 UN Fish Stocks Agreement and the 1982 UN Convention. In this respect it is similar to the 1993 FAO Compliance Agreement, but the 1995 UN Fish Stocks Agreement makes this duty even more explicit. Article 18(3) describes measures to be taken by a State in respect of vessels flying its flag, including: control of its flag vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level; establishment of national regulations to apply terms and conditions to the licence, prohibit unlicensed fishing on the high seas, require vessels fishing on the high seas to carry the licence on board at all times and produce it on inspection, and ensure that its flag vessels do not conduct unauthorized fishing within areas under national jurisdiction of other States; a national record of fishing vessels authorised to fish on the high seas; requirements marking of fishing vessels and gear, for recording and timely reporting on vessel position, catch of target and non target species, fishing effort and other relevant data; requirements for monitoring, control and surveillance of vessels, their operations and related activities, and catch verification through *inter alia* market statistics and supervision of transshipment; and regulation of fishing activities to ensure compliance with regional and global measures).

Under Article 19, a flag State has an obligation to ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, the flag State must enforce subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks irrespective of where violations occur. It must investigate any alleged violation of subregional or regional conservation and management measures and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation. If there is sufficient evidence of an alleged violation, the case must be referred to its authorities with a view to instituting proceedings. Where appropriate, the flag State must detain the vessel concerned. The flag State must ensure that, where it has been established, in accordance with its laws, that a vessel has been involved in the commission of a serious violation of aforesaid measures, the vessel does not engage in fishing operations on the high seas until such time as there has been compliance with all outstanding sanctions imposed by the flag State in respect of the violation.

Sanctions applicable in respect of violations must be adequate in severity to be effective in securing compliance and discouraging violations wherever they occur, and are to deprive offenders from the benefits accruing from their illegal activities.²⁶ The UN Fish Stocks Agreement provides for cooperation in enforcement in Article 20, and a flag State is required to investigate its vessel on the high seas, at the request of a coastal State, where there are reasonable grounds for believing that its vessel has been engaged in unauthorized fishing in an area within the national jurisdiction of the coastal State.²⁷

Collection and sharing of data and scientific information also receives attention under the UN Fish Stocks Agreement. It expands the basic obligation laid down in articles 61(5) and 119(2) of the 1982 UN Convention. The Agreement lays down the basic principle that coastal States and States fishing on the high seas shall "*collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species, fishing effort, ...as well as information from national and international research programmes*". In doing so, they ought to follow the "standard requirements" as set out in Annex 1 of the Agreement.

The UN Fish Stocks Agreement reaffirms and builds on the basic principles in the Compliance Agreement. Both agreements have developed in the context of the 1982 UN Convention, in particular Article 117 and Articles 63(2) and 64. Their objectives differ but are fully consistent and complementary. It calls for an enhancement of flag State responsibility and the exercise of jurisdiction and control, *inter alia* through regional collaboration in enforcement. It is difficult to establish which one is wider in scope since the former applies "unless otherwise provided" to the conservation and management of straddling fish stocks and highly migratory fish stocks "beyond areas of national jurisdiction". Unlike the FAO Compliance Agreement, which applies to the high seas in general, it does not contain a definition of "fishing vessels" nor does it provide for exemptions from flag State responsibilities. There is an interesting interrelationship between these two binding instruments. For example, Article 8(4) of the UN Fish Stocks Agreement is an elaboration of Article III of the FAO Compliance Agreement which merely requires that parties ensure that their vessels do not engage in any activity that undermines the effectiveness of international conservation and management measures. In other words, membership – or at least agreeing to play by the same rules is *condition sine qua non* for access to a fishery.²⁸ Likewise Article 17(4) the UN Fish Stock Agreement builds on Article V of the FAO Compliance Agreement which calls for cooperation and the exchange of information in order to assist the flag State in identifying vessels flying its flag that are reported to have engaged in activities undermining international conservation and management measures.

²⁶ Article 19(2) of the UN Fish Stocks Agreement.

²⁷ Article 20(6) of the UN Fish Stocks Agreement.

²⁸ Rayfuse, Rosemary, "The Interrelationship between Global Instruments of International Fisheries Law", Kluwer Law International, The Hague/London/Boston, 1999, 107p.

Notably, in both agreements there is a parallel strengthening of the role of coastal and port States in securing compliance of vessels with international rules. The focus is not exclusively on the flag State.

Between these two binding Agreements there are also differences between provisions relating to sanctions. Sanctions for serious offences under Article III(8) of the FAO Compliance Agreement with respect to fishing vessels (of a Party) which act in contravention of the Agreement encompass "refusal, suspension or withdrawal of the authorization to fish on the high seas". Article 19(2) of the UN Fish Stocks Agreement states that offenders [must] be deprived of the benefits accruing from their illegal activities" and that measures applicable to masters and other officers of fishing vessels are to include provisions which may permit refusal, withdrawal or suspension of authorisations to serve as masters or officers on such vessels.

Provisions concerning compliance and enforcement in the UN Fish Stocks Agreement raise many "new" points. Of particular interest is Article 21 on "Sub-regional and regional co-operation in enforcement". It relates to the boarding and inspection powers of States Party to the Agreement of vessels flying the flags of other States Party in any high seas area covered by a sub-regional or regional fisheries management organization or arrangement of which the boarding State is a member. It should be noted that fishing vessels flying the flag of States that are not party to the Agreement could expect to face difficulties if they do not comply with the regional or sub-regional conservation measures of a regional fisheries management organisation or arrangement.²⁹

The UN Fish Stocks Agreement provides a legal basis for preventing, deterring and eliminating IUU fishing in areas beyond areas of national jurisdiction and in respect of those fishing vessels fishing for straddling fish stocks and highly migratory fish stocks. It establishes the legal conditions for a right of boarding and inspection of fishing vessels of States Parties in an area of high seas covered by a subregional or regional fisheries organization and fishing for straddling fish stocks and highly migratory fish stocks. The Agreement promotes enhancement of effective control and jurisdiction over vessels and the contents of the "genuine" link is, like the FAO Compliance Agreement by reference to the effective exercise of flag State responsibilities.

The FAO Code of Conduct for Responsible Fisheries

The FAO Code of Conduct was developed in response to a number of international calls for action against the increasing threat of overexploitation of fisheries resources caused by the rapid and often uncontrolled exploitation of the resources and development of the fishing industry. Among the main concerns was the increasing problem of unregulated fishing on the high seas, including by vessels flying "flags of convenience" or being registered in countries operating open registries. The Code of Conduct was developed in parallel with the UN Fish Stocks Agreement and was adopted by the FAO Conference on 31 October 1995. It is global in scope, applicable to all fisheries and is voluntary in nature. The Code deals with the issue of flag State duties and it urges, in its General Principles, States to exercise effective flag State control in order to ensure the proper application of the Code. This principle is further developed in Article 8 on "Fishing Operations" *inter alia*, which provides that flag States should ensure that no fishing vessels entitled to fly their flag fish on the high seas or in waters under the jurisdiction of other States "unless such vessels have been issued with a Certificate of Registry and have been authorized to fish by the competent authorities".³⁰ Among other duties of the flag State are the maintenance of records of fishing vessels, marking requirements, requirements for the safety of fishing vessels and fishers and enforcement measures in case of contravention of applicable conservation and management measures. An indirect reference to the reflagging problem can also be found in Article 7.8.1, which provides that "without prejudice to relevant international agreements, States should encourage banks and financial institutions not to require, as a condition of a loan or mortgage, fishing vessels or fishing support vessels to be flagged in

²⁹ See Article 20(7) of the UN Fish Stocks Agreement.

³⁰ Article 8.2.2 of the Code.

a jurisdiction other than that of the State of beneficial ownership where such a requirement would have the effect of increasing the likelihood of non-compliance with international conservation and management measures.”

The Code, while reiterating the basic obligation of jurisdiction and control by flag States, touches upon elements which are likely to reinforce effective control. In this respect it elaborates mechanisms to pull other players into the game, including vessel owners, financial institutions, insurers, and crew.

International Plan of Action on Illegal, Unreported and Unregulated Fishing

On 2 March 2001, the Committee on Fisheries of FAO agreed on the IPOA-IUU. The instrument is voluntary in character, and not meant to give rise to any legally binding obligations. The IPOA-IUU was developed within the framework of the FAO Code of Conduct for Responsible Fisheries.³¹ The IPOA-IUU reaffirms basic provisions of the 1982 UN Convention, the 1993 FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement and the 1995 FAO Code of Conduct for Responsible Fisheries. It does go further though, and is more detailed with respect to certain actions, for example with respect to trade, port State control and controls over nationals. More importantly, the IPOA-IUU gives an impetus to all State responsibilities, as well as flag State responsibility. The IPOA-IUU reflects the need for increased flag State control over activities of its fishing vessels, within areas under national jurisdiction as well as on the high seas. As a priority task, the IPOA-IUU calls for more effective flag State control. Within the EEZ, this implies a more effective use of existing powers.

The basic objective of the IPOA-IUU is set out in PART III Objectives and Principles. It states:

*The objective of the IPOA is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.*³²

The IPOA-IUU is to be considered as a toolbox and as such it offers a variety of tools for a flag State to take up its responsibilities and control its fishing vessels. Flag State Responsibilities under the IPOA-IUU are covered in paragraphs 34–50. They are subdivided into 3 main headings: Fishing Vessel Registration; Record of Fishing Vessels; Authorization to Fish.

Fishing Vessel Registration

As seen above, in most cases, registration is a means to grant a nationality to a vessel. First, States should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing.³³ Prior to registering a fishing vessel, a flag State should ensure that it can “exercise its responsibility to ensure that the vessel does not engage in IUU fishing”.³⁴

A particular focus is placed on the need for coordination and information sharing with a view to linking the registration of fishing vessels and the authorization to fish, whether the latter is being issued by the flag State to fish on the high seas or waters under this jurisdiction or by a coastal State.

³¹ Some of the objectives of the Code are to “to serve as an instrument of reference to help States to establish or to improve the legal and institutional framework required for the exercise of responsible fisheries and in the formulation and implementation of appropriate measures.” (Article 3 c), and to “provide guidance which may be used where appropriate in the formulation and implementation of international agreements and other legal instruments, both binding and voluntary” (Article 3 d).

³² Para. 8.

³³ Para. 34.

³⁴ Para. 35.

This need for coordination is essential where different institutions are involved in the registration and fishing authorization process.

Record of Fishing Vessels

This part builds on the articles in the FAO Compliance Agreement relating to the record of fishing vessels entitled to fly the State's flag and the sharing of information.³⁵ The IPOA-IUU states that each flag State's record of fishing vessels should include, for vessels authorized to fish on the high seas, the information set out under the FAO Compliance Agreement and additional information about the previous names of the vessel, particulars of the operators, beneficial owners, ownership history of the vessel and vessel dimensions. Where possible, a link is to be made between the ownership history of a vessel, and the history of non-compliance by that vessel at a national, regional or global level. Finally, with respect to fishing on the high seas, the record may also contain information relating to non authorized vessels.

Authorization to Fish

As pointed out in the FAO Technical Guidelines for Responsible Fisheries on the implementation of the IPOA-IUU, the IPOA-IUU reaffirms the responsibility of, and calls upon, flag States to require their vessels to obtain express authorization before fishing in any marine area. In paragraphs 46 and 47, the IPOA suggests a broad range of information, terms and conditions to be set out in an authorization, from such standard items as the name of the vessel, the species, the gear authorized, the duration, to more "modern" terms and conditions, relating to vessel monitoring systems, catch reporting, transshipment reporting and those generated under arrangements applicable to the flag State.

Attention is also drawn to concerns relating to misreporting or underreporting by support and transport vessels. The IPOA-IUU urges flag States to ensure that support and transport vessels flying their flag do not support IUU fishing and to monitor and control transshipment activities involving their vessels by requiring prior authorization to tranship and reporting.

Flag State responsibility is not only dealt with under the heading "Flag State Responsibilities" in the IPOA-IUU. The primary responsibility of the flag State in preventing, deterring and eliminating IUU fishing is complemented by encouragement among non-flag States, whether coastal or port States, to coordinate their activities and cooperate directly or through relevant regional fisheries management organisations in a range of specified areas.³⁶ Moreover, to ensure that "nationals" do not support or engage in IUU fishing, the IPOA-IUU calls also for State enforcement actions to be taken vis-à-vis "nationals" who may be subject to its jurisdiction including on grounds of their nationality³⁷ and for States to discourage their nationals from flagging fishing vessels under the jurisdiction of a State that does not meet its flag State responsibilities.³⁸ Interestingly the Plan does not provide any guidance with respect to the term "nationals".

Implementation of the instruments: Some developments that may enhance the primary responsibility of flag States

The FAO Compliance Agreement and the UN Fish Stocks Agreement are now in force and parties to these Agreements are bound by their provisions to implement them at national, sub-regional, regional and international level. While there are similarities between the international instruments discussed above, there are also differences. These are likely to have a bearing on the development of concepts developed in these instruments, including the concept of flag State responsibility.

³⁵ Articles IV and VI of the Compliance Agreement.

³⁶ Para. 29-31.

³⁷ See paragraphs 9.3, 18, 19, 21, 84.

³⁸ Para. 19

Inconsistencies in interpretation and practice could well arise. Important differences lay in the scope, the primary objectives, as well as the Articles of the 1982 UN Convention against which these instruments have been developed. The international instruments also address different parties. The binding instruments are directed at States in particular, whereas the Code of Conduct (while addressing "States") concerns all participants in the fisheries sector, both public and private, and at all levels, national (local and central), regional and global level. While the 1982 UN Convention is now widely accepted, few States are party to the other agreements. There is not yet universal participation.

The Table in Appendix E.2 shows that there are currently 143 parties to the 1982 UN Convention³⁹, 36 to the UN Fish Stocks Agreement and 27 to the FAO Compliance Agreement. Not all countries that have ratified the UN Fish Stocks Agreement have acceded to the FAO Compliance Agreement and vice versa.⁴⁰ The fact that countries have undertaken different legal obligations implies that there exists a potential for conflicts between parties and non-parties, members and non-members of regional fisheries organizations as well as different arrangements. However the above illustration of the inter-relationship between the recently adopted binding agreements evidences clearly that to achieve optimum enforcement States will need to become party to both agreements.

A number of countries have developed and passed national legislation to implement flag State responsibilities with respect to fishing vessels fishing on the high seas. In the "Guide to Implementing the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement" prepared by William Edson, David Freestone and Ely Gudmundsdottir⁴¹, national legislation from a number of countries was analyzed. They included: Canada, Norway, Iceland, the Republic of South Africa, the United States, Australia, and New Zealand. Further additions to this list are: EU⁴², Namibia and Spain. A review of national fisheries legislation is underway in a number of countries *inter alia* to implement relevant international fisheries instruments. To list a few: Barbados, Malaysia, Maldives, Seychelles, St. Lucia, and Tonga. National legislative provisions provide for the framework to authorize high seas fishing, describing where, when and how to apply, what fees, and other conditions imposed on the granting of authorizations. The extent of detail and the approaches differ from one country to another in light of, *inter alia*, the legal system, the cultural, political and socio-economic environment. States in their national law make attempts to identify those vessels that are subject to flag State control in order for the flag State to exercise effectively its duties. Furthermore, to exercise their duties effectively, national legislation has been developed to both criminalize the activities of its fishing vessels engaging in IUU and undermining international conservation and management measures and provide penalties for violation. A link is often made between registration of fishing vessels and issuance of high seas fishing licenses. Furthermore, international cooperation in enforcement, sub-regional and regional cooperation in enforcement and basic procedures for boarding and inspections receive detailed legislative attention and create a lot of challenges for legislators. Some States have also provided for jurisdiction over nationals.

Regional developments have also taken place to implement the different international fisheries instruments. Among the most recent measures taken over the last five years the following could be mentioned: catch documentation schemes; use of VMS for fishing vessels fishing for commercial value species; exchange of information on IUU fishing vessels or flying a so called flag of convenience; boarding and inspection schemes; exchange of information among the parties of a regional fisheries management organization on fishing vessels authorized to fish on the high seas;

³⁹ As at 15 August 2003.

⁴⁰ At the time of writing of this paper, seven countries are parties to the UN Fish Stocks Agreement and the FAO Compliance Agreement: they are Barbados, Canada, Mauritius, Namibia, Norway, Saint Kitts and Nevis and Seychelles. Notably Canada is not a party to the 1982 UN Convention.

⁴¹ "Legislating for Sustainable Fisheries: A Guide to Implementing the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement", by William Edson, David Freestone, and Ely Gudmundsdottir, The World Bank, Law Justice and Development Series, 2001.

⁴² See e.g. Council Regulation (EC) No. 1936/2001 laying down control measures applicable to fishing for certain stocks of highly migratory fish; Commission Regulation (EC) No. 500/2001 laying down detailed rules for the application of Council Regulation (EEC) No. 2847/93 on the monitoring of catches taken by Community fishing vessels in third country waters and on the high seas.

regional vessel registries; and schemes to promote compliance by non-parties.⁴³ The regional and subregional initiatives are taken throughout the world and reflect the collaborative effort towards preventing, deterring and eliminating IUU fishing, a global problem.

CONCLUSION

While the illegal, unreported and unregulated fishing activities still continue, international law seems to be increasing the responsibility of flag States. The instruments referred to in this paper provide the framework for future actions concerning fisheries *inter alia* under jurisdiction and control of flag States especially in the area of high seas fishing. The 1982 UN Convention is not conclusive, in particular in the context of high seas fisheries. But it should be reiterated here that all matters not regulated by this Convention continue to be governed by the rules and principles of general international law. The FAO Compliance Agreement, the UN Fish Stocks Agreement and the Code of Conduct for Responsible Fisheries were negotiated over a broadly similar time frame and many negotiators were the same. This resulted in a high level of consistency between the three instruments with respect to the concept of flag State responsibilities, and also in the progress with respect to the contents of this concept and in the introduction of some "novel" provisions. The non-binding nature of the Code of Conduct and the IPOA-IUU allowed going sometimes beyond the letter of the 1982 UN Convention (based on a consensus of the international community) and making additional steps forward to combat undesirable behaviour of fishing vessels towards more adequate global, regional, subregional and national adequate fisheries management. The extent to which the international voluntary instruments will allow for a more progressive interpretation of the concept of flag State responsibility as provided in binding international instruments is unknown.

It may be asked whether the implementation of the voluntary international instruments such as the IPOA-IUU will be more successful than the binding agreements. The implementation and compliance of an international instrument is not always a matter of a binding or not binding instrument, or of accession or ratification. It may be a simple matter of concerns or of different interpretation of concepts. However, if these instruments are not widely implemented, the problems identified at the root of IUU fishing will remain. For implementation and compliance to occur, States must choose to implement and comply.

The link between a vessel and a flag State remains a primary link. The international instruments referred to in this paper appear to sidestep the issue of genuine link. Instead the concept of flag State responsibility including in particular the obligation of effective control by a flag State over fishing vessels flying its flag is underscored. In other words, States could register vessels even if the "genuine" link between the State and the vessel was doubtful (i.e. absence of a genuine link), but if they did they then are under the obligation to exercise effective control. Effective control by a flag State implies in turn *inter alia* a flag State's ability to ensure its vessels do not undermine international conservation and management measures and to take enforcement measures against those that do so. This development is not surprising. Indeed since the attempts to give meaning to the notion of "genuine" link have not been successful, the focus has evolved on the obligation of States that register a fishing vessel and grant nationality to a fishing vessel to exercise effective control over such vessel.

International Law must evolve to accommodate changing legal and practical realities but all States must participate in combating IUU fishing and undertake their obligations in good faith which they have agreed to namely in the course of the global negotiations of relevant international fisheries instruments. Finally, because it is unknown how international law evolves, States should also bear in mind the potential impact of Article 300 of the 1982 UN Convention, requiring States Parties to fulfil in good faith the obligations assumed under the Convention and exercise the rights, jurisdictions and freedoms recognized in the Convention in a manner which would not constitute an abuse of right.

⁴³ For further reading on the subject matter, see Douman D. "Global Overview of IUU fishing and its impacts on national and regional efforts to manage fisheries sustainably: The rationale for the conclusion of the 2001 FAO International Plan of Action" (Appendix D)

IPOA-IUU

Paragraph 3

In this document:

3.1 Illegal fishing refers to activities:

3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

3.2 Unreported fishing refers to fishing activities:

3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

3.3 Unregulated fishing refers to fishing activities:

3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable international law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).

APPENDIX E.2
STATUS OF SIGNATURES, RATIFICATIONS, ACCESSIONS TO INTERNATIONAL FISHERIES INSTRUMENTS*

State or entity	1982 UN Convention on the Law of the Sea		UN Fish Stocks Agreement		FAO Compliance Agreement	National Plan of Action to Implement the IPOA-JIU**	
	Signed	Ratified/ Acceded	Signed	Ratified/ Acceded		Deposit of Instrument of acceptance	NPOA
AFGHANISTAN	Signed						
ALBANIA		23/06/2003					NO
ALGERIA	Declaration	11/06/1996					NO
ANGOLA	Declaration	05/12/1990					NO
ANTIGUA AND BARBUDA	Signed	02/02/1989					NO
ARGENTINA	Declaration	01/12/1995	Signed		24/06/1996		NO
ARMENIA		09/12/2002					
AUSTRALIA	Signed	05/10/1994	Signed	23/12/1999			yes
AUSTRIA	Signed	14/07/1995	Signed				
BAHAMAS	Signed	29/07/1983		16/01/1997			
BAHRAIN	Signed	30/05/1985					NO
BANGLADESH	Signed	27/07/2001	Signed				NO
BARBADOS	Signed	12/10/1993		22/09/2000	26/10/2000		NO

* For further details, please consult

http://www.un.org/decls/los/convention_agreements/convention_declarations.htm
http://www.un.org/decls/los/convention_agreements/convention_overview_convention.htm
<http://www.fao.org/legal/treaties/012s-e.htm>

** Information as provided to FAO for the biennial report to the Committee on Fisheries on progress towards implementation of the Code of Conduct for Responsible Fisheries.

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to implement the IPOA-IUU ¹⁷ follow the EU policy
BELGIUM	Declaration 13/11/1988	Signed		
BELIZE	Signed 13/08/1983			no
BENIN	Signed 16/10/1997	Signed	04/01/1999	no
BHUTAN	Signed			
BOLIVIA	Declaration 28/14/1995			
BOZNIA AND HERZEGOVINA	19/01/1994			no
BOTSWANA	Signed 02/05/1990			
BRAZIL	Declaration 22/12/1988 01/12/1996	Signed 08/03/2000		under preparation
BRUNEI DARUSSALAM	Signed 05/11/1996			
BULGARIA	Signed 15/05/1996			yes
BURKINA FASO	Signed	Signed		
BURUNDI	Signed			
CAMBODIA	Signed			no
CAMEROON	Signed			under preparation
CANADA	Signed ¹⁷ 19/11/1985	Signed 03/08/1999	20/05/1994	no
CAPE VERDE	Declaration 10/08/1987			intend to complete shortly
CENTRAL AFRICAN REPUBLIC	Signed			
CHAD	Signed			

¹⁷ Canada ratified the 1982 UN Convention on 07/11/2003, after this Expert Consultation was held (Ed).

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to Implement the IPOA-IUU"
CHILE	Declaration			partially
CHINA	Signed	07/06/1996	Declaration	no
COLOMBIA	Signed			
COMOROS	Signed	21/06/1994		
CONGO, REPUBLIC OF				intend to develop
COOK ISLANDS	Signed	15/02/1995		no
COSTA RICA	Declaration	21/09/1992	01/04/1999	yes
COTE D'IVOIRE	Signed	26/03/1984	18/06/2001	yes
CROATIA		05/04/1995		yes
CUBA	Declaration	15/08/1984		yes
CYPRUS	Signed	12/12/1988	25/09/2002	no
CZECH REPUBLIC	Signed	21/06/1996		
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA	Signed		24/04/2003	yes
DEMOCRATIC REPUBLIC OF THE CONGO	Signed	17/02/1989		yes
DENMARK	Signed			on the basis of EU regulation
DJIBOUTI	Signed	08/10/1991	Signed	yes
DOMINICA	Signed	24/10/1991		no
DOMINICAN REP.	Signed			no
ECUADOR				yes
EGYPT	Signed	26/08/1983	Signed	no
			14/08/2001	

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to Implement the IPOA-IUU ¹²
EL SALVADOR	Signed			yes
EQUATORIAL GUINEA	Signed			yes
ERITREA				no
ETHIOPIA	Signed			
EUROPEAN COMMUNITY	Declaration	Declaration	06/08/1996	yes, Brussels 20/05/2002; COM (2002)180 final
FUJI	Signed	Signed	12/12/1996	no
FINLAND	Declaration	Signed		no
FRANCE	Declaration	Declaration		yes
GABON	Signed	Signed		no
GAMBIA	Signed			
GEORGIA	Signed			
GERMANY		Signed	07/09/1994	
GHANA	Signed			no
GREECE	Declaration	Signed	12/05/2003	yes
GRENADA	Signed			
GUATEMALA	Signed			no
GUINEA	Declaration			yes
GUINEA-BISSAU	Signed	Signed		no
GUYANA	Signed			intend to develop
HAITI	Signed			intend to develop
HONDURAS	Signed			yes
HUNGARY	Signed			

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to Implement the IPOA-IUU
ICELAND	Signed	Signed	14/02/1997	no
INDIA	Signed		19/08/2003	yes
INDONESIA	Signed	Signed		yes
IRAN, ISLAMIC REPUBLIC OF	Declaration		17/04/1998	intend to develop
IRAQ	Declaration			
IRELAND	Signed	Signed		
ISRAEL		Signed		
ITALY	Declaration	Signed		yes
JAMAICA	Signed	Signed		
JAPAN	Signed	Signed	20/06/2000	
JORDAN		Signed		no
KENYA	Signed			
KIRIBATI				
KUWAIT	Signed			
LAO PEOPLE'S DEMOCRATIC REPUBLIC	Signed			
LATVIA				
LEBANON	Signed			
LESOTHO	Signed			
LIBERIA	Signed			
LIBYAN ARAB JAMAHIRIYA	Signed			no
LIECHTENSTEIN	Signed			

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to implement the IPOA-IU ¹⁰ intend to develop
NAURU	Signed 23/01/1996	10/01/1997		
NEPAL	Signed 02/11/1998			
NETHERLANDS	Signed 28/06/1996	Declaration		
NEW ZEALAND	Signed 19/07/1996	Signed 18/04/2001		will be finalized late 2003
NICARAGUA	Declaration 03/05/2000			
NIGER	Signed			
NIGERIA	Signed 14/08/1986			
NIUE	Signed	Signed		
NORWAY	Signed 24/06/1996	Signed 30/12/1996	28/12/1994	no
OMAN	Declaration 17/08/1989			no
PAKISTAN	Signed 26/02/1997	Signed		no
PALAU	Signed 30/09/1996			
PANAMA	Signed 01/07/1996			yes
PAPUA NEW GUINEA	Signed 14/01/1997	Signed 04/06/1999		
PARAGUAY	Signed 26/09/1986			
PERU			23/02/2001	
PHILIPPINES	Declaration 08/05/1984	Signed		
POLAND	Signed 13/11/1998			
PORTUGAL	Signed 03/11/1997	Signed	06/08/1996	
QATAR	Declaration 09/12/2002			
REPUBLIC OF KOREA	Signed 29/01/1996	Signed	24/04/2003	
ROMANIA	Declaration 17/12/1996			

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to Implement the IPOA-IUU ¹
RUSSIAN FEDERATION	Declaration 12/03/1997	Signed	04/08/1997	
RWANDA	Signed			
SAINT KITTS AND NEVIS	Signed 07/01/1993	Signed	09/08/1996	24/06/1994
SAINT LUCIA	Signed 27/03/1985			23/10/2002
SAINT VINCENT AND THE GRENADINES	Signed 01/10/1993			no
SAMOA	Signed 14/08/1995	Signed	25/10/1996	no
SAO TOME AND PRINCIPE	Declaration 03/11/1987			
SAUDI ARABIA	Signed 24/04/1996			
SENEGAL	Signed 25/10/1984	Signed	30/01/1997	yes
SERBIA AND MONTENEGRO	Signed 12/02/2001			
SEYCHELLES	Signed 16/09/1991	Signed	20/03/1998	intend to develop
SIERRA LEONE	Signed 12/12/1994			yes
SINGAPORE	Signed 17/11/1994			
SLOVAKIA	Signed 8/05/1996			
SLOVENIA	Signed 16/05/1995			
SOLOMON ISLANDS	Signed 23/06/1997		13/02/1997	
SOMALIA	Signed 24/07/1989			
SOUTH AFRICA	Declaration 23/12/1997		14/08/2003	
SPAIN	Declaration 15/01/1997	Signed		yes
SRI LANKA	Signed 19/07/1994	Signed	24/10/1996	no
SUDAN	Declaration 23/01/1985			yes

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to implement the FPOA-IUU"
SURINAME	Signed 09/07/1998			
SWAZILAND	Signed			
SWEDEN	Declaration 25/06/1996	Signed	25/10/1994	yes
SWITZERLAND	Signed			
SYRIA			13/11/2002	yes
THAILAND	Signed			no
THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA	19/08/1994			no
TOGO	Signed 16/04/1985			no
TONGA	02/08/1995	Signed	31/07/1996	no
TRINIDAD AND TOBAGO	25/04/1986			intend to develop
TUNISIA	Signed 24/04/1985			no
TURKEY				yes
TUVALU	Signed 09/12/2002			
UGANDA	Signed 09/11/1990	Signed		
UKRAINE	Declaration 26/07/1999	Signed	27/07/2003	
UNITED ARAB EMIRATES	Signed			
UNITED KINGDOM	25/07/1997	Signed	10/12/2001	
UNITED REPUBLIC OF TANZANIA			11/11/1999	
UNITED STATES OF AMERICA				
URUGUAY	Declaration 10/12/1992	Signed	21/08/1996	yes
VANUATU	Signed 10/08/1999	Declaration 10/09/1999	19/12/1995	yes

State or entity	1982 UN Convention on the Law of the Sea	UN Fish Stocks Agreement	FAO Compliance Agreement	National Plan of Action to Implement the IPOA-IUU"
VENEZUELA				yes
VIET NAM	Signed	25/07/1994		no
YEMEN	Declaration	21/07/1987		no
ZAMBIA	Signed	07/03/1983		

APPENDIX F

FISHING VESSELS OPERATING UNDER OPEN REGISTRIES AND THE EXERCISE OF FLAG STATE RESPONSIBILITIES: INFORMATION AND OPTIONS¹Judith Swan²

ABSTRACT

The number of fishing vessels operating under open registries is increasing. A related concern is to secure the effective control of fishing vessels by the flag State. This concern is evidenced by a range of post-United Nations Conference on Environment and Development (UNCED) international instruments that progressively include clearer and more thorough duties of the flag State. The purpose of this paper is to review activities relating to the fishing fleets of countries with open registries and, in particular, those activities that result from countries not exercising effective flag State control over those fleets. It is based on information available in the public domain and communications with officials in States, Regional Fisheries Management Organizations and international organizations and agencies.

The current interpretation of the provision on the need for a "genuine link" between a ship and its flag is to secure more effective implementation of the duties of the flag State. An aim of this paper is to report on how and where this is being achieved. Flag State responsibilities in relation to fishing vessels are reviewed as they appear in the recent international instruments: the 1982 UN Convention, the FAO Compliance Agreement, the UN Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fisheries and the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

The rationale for maintaining or using open registries is discussed from the point of view of the open registry State, the shipowner and the fishing vessel owner. National policy, legislation and administrative arrangements for open registries are explained. The varying degrees of control and compliance implemented by the flag State are noted, and the effect of these on fishing fleets flying its flag is observed.

This paper also provides details about open registry procedures, including national contacts, administration, application information and procedures. Measures taken by some open registry States to improve the application process and deregister, fine or otherwise deal with offending vessels are reported. Actions taken by Regional Fishery Management Organizations to implement flag State compliance are detailed, noting some compelling successes. Many offenders are open registry ships, and their nationality is noted where information is available.

INTRODUCTION

The "Post-UNCED"³ decade, since 1992, has ushered in a new era of responsibility for States in respect of their fishing fleets. The rules requiring them to secure compliance by fishing fleets flying their flags with national laws, treaties and international conservation and management measures have multiplied and solidified in a range of international instruments. The term "flag State responsibility" has taken on some compelling new dimensions.

¹ This paper is a condensed version of Swan, J. "Fishing vessels operating under open registers and the exercise of flag State responsibilities." Information and options. FAO Fisheries Circular No. 980. Rome, FAO, 2002. 65p.

² FAO Consultant, FishCode Programme.

³ United Nations Conference on Environment and Development.

The reason for this was growing global concern about the state of the world's fish stocks and the associated problem of poorly controlled fishing fleets. Action was needed to address irresponsible fishing activity, both in areas of national jurisdiction and on the high seas. Practices undercutting sustainable management included reflagging vessels to evade controls, undermining international conservation and management measures, illegal fishing in areas of national jurisdiction and unreported fishing.

The action taken by the international community to address the alarming situation caused by these activities rested on two complementary pillars: strengthened law, and strengthened management over the resource.

The way forward for such action was identified:⁴ for strengthened law, to enhance the requirements of the 1982 United Nations Convention on the Law of the Sea (the 1982 UN Convention) in new international legal instruments; and for improved fisheries management to identify agreed new approaches in instruments developed under the auspices of the Food and Agriculture Organization of the United Nations (FAO).

The 1982 UN Convention had itself adopted and in some respects enhanced many of the provisions of an earlier convention – the 1958 Geneva Convention on the High Seas (1958 Geneva Convention) relating to flag State rights and responsibilities on the high seas.⁵ First among these was freedom of the high seas, including freedom of fishing.⁶ This was a basic tenet of the 1958 Geneva Convention, regarded as codifying existing international law but which never entered into force.

The historic right of each State to sail ships under its flag on the high seas first appeared in the 1958 Convention.⁷ The ship was subject to the exclusive jurisdiction of the flag State on the high seas.⁸ The retention – or loss – of nationality was to be decided by the State from which nationality was derived.⁹ The duty of the flag State to “effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag,”¹⁰ also appeared under both Conventions.

This was the basic legal framework upon which the post-UNCED legally binding international instruments were built. These core “rulebooks” contain a range of requirements relating to flag State responsibilities, duties, compliance and enforcement and are the:

- 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the FAO Compliance Agreement);
- 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation

⁴ The genesis of the international instruments are identified in Part II of FAO Circular No 980. Note especially references to Agenda 21, Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol.1, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), Resolution 1, Annex II, and proceedings of the FAO Committee on Fisheries (COFI).

⁵ See discussion in Part II of FAO Circular No 980 for further detail on the provisions in the 1982 UN Convention.

⁶ Article 2: freedom of the high seas, including the right to fish, must be exercised with reasonable regard to the interests of other States in their exercise of the freedom of the high seas. This appears in Article 87 of the 1982 UN Convention.

⁷ Article 4 in the 1958 Geneva Convention; Article 90 in the 1982 UN Convention.

⁸ Article 5 in the 1958 Geneva Convention, with the qualification that international law or agreement does not provide otherwise. Article 92 of the 1982 UN Convention.

⁹ This requirement is clear in: Article 5.1 of 1958 Geneva Convention, that each State is to fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag; and Article 18, that a ship or aircraft may retain its nationality even though it has become a pirate ship or aircraft. The retention or loss of nationality is determined by the law of the State from which such nationality was derived. See Articles 94.1 and 104 of the 1982 UN Convention.

¹⁰ Article 5.1 in the 1958 Geneva Convention, Article 94 of the 1982 UN Convention.

and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the 1995 UN Fish Stocks Agreement);

The post-UNCED international instruments that are voluntary, and management-oriented, were formulated to be interpreted and applied in conformity with the relevant rules of international law. They address threats to the long-term sustainability of fisheries and contribution of fisheries to food supply, including over-exploitation of important fish stocks, modifications of ecosystems, significant economic losses and international conflicts on management and fish trade. Irresponsible fishing activity that directly undermines management efforts is clearly identified, together with flag State and other measures that should be taken to counter such activity. They are the:

- 1995 Code of Conduct for Responsible Fisheries (FAO Code of Conduct);
- 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing¹¹ (FAO IPOA-IUU).

Information relating to the development and provisions of these instruments is described in the full FAO Fisheries Circular No 980. A summary table of requirements relating to flag State responsibility that are common to two or more instruments is in Appendix F.1.

Other agreements and documents to implement the above instruments on regional, sub-regional and bilateral levels have been developed.¹² In addition, many regional fisheries management organizations or arrangements (RFMOs) are implementing these instruments according to their mandates, and States are incorporating the requirements into their national laws.

The number of instruments incorporating flag State responsibility reflects the considerable international concern about the proportions of the problem, but the operative question is – are these instruments effective; in particular, are they effective in view of the operation of open registries by an increasing number of States?

A State that operates an open register will accept vessels owned by nationals from other States, which will then fly the flag of the open registry State.¹³ The 1982 UN Convention¹⁴ provides that the flag State assumes jurisdiction in respect of administrative, technical and social matters concerning the ship, as well as other matters such as labour conditions and seaworthiness. The flag State is responsible for the diplomatic and naval protection of its flag vessels. And, under the post-UNCED international instruments, the flag State is responsible for the vessel's compliance with applicable laws and international fisheries conservation and management measures, including on the high seas.

However, for many States, open registries are just another way to make money. While some States that operate open registries have taken positive steps to fulfill international flag State compliance responsibilities in respect of fishing vessels, others have yet to engage in the process, and do not exercise these responsibilities. Most of these States do not belong to, or cooperate with, any

¹¹ Adopted by the FAO Committee on Fisheries (COFI) at its Twenty-fourth Session in March 2001.

¹² For example, the 2000 Convention on the Conservation of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and the FAO Technical Guidelines for Implementation of the FAO Code of Conduct.

¹³ The relevant international instruments do not provide a legal definition for "open register" or "flag of convenience". In the experience of IMO, FAO and UNCTAD there are no legally accepted definitions of these terms, but both are widely used and have in a sense been "defined by usage". UNCTAD's working approach considers that an open register is the one including vessels owned by nationals of other countries. If the percentage owned by nationals of other countries is very high, above 99%, then one speaks of a flag of convenience. If the percentage owned by nationals of the country is high, above 80-90%, then the register is an international one.

¹⁴ Article 94.

RFMO that has adopted international conservation and management measures. This makes it very attractive for fishing vessels that would otherwise have to comply with such measures to buy a "flag of convenience" (FOC) from an open registry State that does not exercise effective flag State compliance responsibilities over fishing fleets.¹⁵

While use of the term "flag of convenience" is widely used and recognised, whether a flag is "convenient" is a matter of interpretation. Some States operating open registries have adopted laws and administrative practices that are not as relaxed, or convenient to shipowners, as others. Some flags are considered to be FOCs by common consent,¹⁶ and a more extensive list has been established by the International Transport Workers Federation (ITF).¹⁷ However, although a vessel may fly what is considered a FOC, it may be genuinely owned and operated by nationals of the flag country.

Countries maintaining open registries that currently include or may have included fishing vessels are indicated in Appendix F.2.

What is the scope of the "flag of convenience" problem? One view was expressed cogently at the Commission on Sustainable Development (CSD 7)¹⁸ during the review of oceans and seas at its Seventh Session in April 1999. The Chair of CSD 7 stated that:

"... fishing activities continue to take place in contravention of the applicable regional conservation regimes and States are not meeting their obligations under the Law of the Sea Convention to control the activities of their flag vessels. Even more problematic is the use of flags of convenience. When fishing companies based in countries that have signed fisheries agreements and conventions then design arrangements that allow ships under their control to go to sea and ignore those agreements under cover of the flag of a non-signatory they make a mockery of the agreement. Governments have to respond."¹⁹

This concern followed swiftly on the heels of a March 1999 report by the ITF that the flag of convenience fishing fleet was growing dramatically – from 11 open registries in 1980 to 29 in 2000²⁰ and the EU reports that the 392 fishing or fish transport vessels flagged outside the EU are distributed among 48 different registries.²¹

On a global level, estimation of the size and impact of the open register fleets can be difficult as they are very fluid, with vessels changing names and flags easily and frequently, moving from fishery to fishery and using a series of "shell" companies to conceal the real identity of their owners.²² It has, however, been estimated that fishing vessels operating under open registries represent less than

¹⁵ See European Parliament Committee on Fisheries, Working Document 1 on the role of flags of convenience in the fisheries sector, 11 April 2001; rapporteur Patricia McKenna, hereafter "McKenna Report".

¹⁶ They are, for example, Panama, Belize and St. Vincent & the Grenadines. Australia, Canada and Norway are considered not to be FOC States. McKenna Report, op. cit. n. 13.

¹⁷ This is based in large part upon social criteria such as ratification of the ILO conventions, safety record, respect for human and trade union rights, etc. Countries so classified include Barbados, Liberia, Mozambique, Netherlands, Antilles, Sierra Leone and Vanuatu. McKenna Report, op. cit. n. 6.

¹⁸ Commission on Sustainable Development, Seventh Session, New York, 19-30 April 1999.

¹⁹ Simon Upton, Chair, Second London Oceans Workshop, December 1998.

²⁰ In addition to these, ITF considers a number of other registries are also on the rise including Mongolia, Equatorial Guinea, Bolivia and Jordan.

²¹ McKenna Report op. cit. n. 13, Revised Working Document 3 on the role of flags of convenience in the fisheries sector, 21 October 2001. The report notes that the most important registries are Mauritania and Belize (51 vessels in each), Panama (47), Morocco (35), Honduras (29) and St. Vincent & the Grenadines (27).

²² See www.seaweb.org.

10 percent of the world fishing fleets.²³ Although their numbers are relatively low, these vessels have a disproportionately negative impact on fisheries conservation and management measures.²⁴

The majority of open registry States are not bound by the many international instruments that require the exercise of flag State control over fishing vessels, nor do they exercise flag State control on a voluntary basis. Therefore, some fishing vessel owners are able to circumvent international requirements by flagging their vessels in non-party States that do not exercise flag State responsibility.²⁵

The CSD review²⁶ highlighted the issue of flag State responsibilities and the need for FAO and the International Maritime Organization (IMO) to cooperate on solving problems related to IUU fishing. Significantly, port State responsibilities were also included in the review; i.e. States where a port is located and a fishing vessel registered in another State is geographically located at a given time. Further, the UN General Assembly urged IMO, FAO and regional fisheries organizations and other relevant organizations to collaborate in defining the concept of a "genuine link" between fishing vessels and the flag State.²⁷

Agreement on a clear definition of what constitutes a "genuine link" between the vessel and the flag State could assist in the implementation of Article 91 of the 1982 UN Convention regarding the nationality of ships. This gives a State the right to fix the conditions for the:

- grant of its nationality to ships;
- registration of ships in its territory; and
- right to fly its flag.

In this context, Article 91 also provides that "...Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship."²⁸

The fact that the State has the right to fix the conditions noted above, including the grant of nationality to ships, provides the basis for the flag State's right to grant nationality to the ship. But this right is accompanied by the requirement that a genuine link must exist between the State and a ship. The purpose of the genuine link requirement has been in issue especially because many open registry States do not require any such link, and its scope is not defined. In fact, the difficulties of defining the scope are compounded by the reality that a ship can, and often does leave a trail of nationalities in its wake – of the owner, operator, charterers, corporate headquarters and others.

At issue is whether the purpose of the genuine link requirement to ensure that effective flag State control can be exercised,²⁹ or to set the conditions for recognition of the nationality of ships by non-flag States – States other than the State of registration.

²³ Lloyd's Register – Fairplay Limited World Fleet Statistics 2001. Lloyd's Maritime Information Service has listed over 1300 fishing vessels greater than 24 metres in length flying flags of convenience. This does not include the large network of refrigerated cargo vessels (reefers) and fuel tankers which support the FOC fishing fleets at sea and allow them to avoid port control measures implemented by some countries. See www.seaweb.org.

²⁴ Troubled Waters, Fishing Pollution and FOCs, Major Group Submission for the 1999 CSD Thematic Review: Oceans and Seas by International Confederation of Free Trade Unions, Trade Union Advisory Committee to the OECD, International Transport Workers' Federation and Greenpeace International, March 1999.

²⁵ *Op cit* n. 16.

²⁶ During the review of oceans and seas at its seventh session in April 1999, as noted in above text.

²⁷ United Nations General Assembly Resolution 54/32 19 January 2000, paragraph 8.

²⁸ In this context, one interpretation is that the ship is "awarded" nationality by the State, which – because Article 91 gives the State the right to determine various conditions – appears to also have implicitly given the right to determine whether a "genuine" link exists.

²⁹ As required in Article 94, and Article 217 of the 1982 UN Convention. The latter appears under the Enforcement Section respecting the marine environment, and requires that the flag State shall:

- effectively enforce applicable international rules and standards irrespective of where the violation occurs;

In fact, the development of the concept of genuine link in international law is deeply rooted in the nationality of persons.³⁰

In the mid-1950's, the International Court of Justice (ICJ)³¹ considered whether a State's grant of citizenship to a person who had a tenuous connection to it would entitle it to represent his claim against another State – and require that other State to recognize the grant of nationality. In concluding that the other State was not obligated to recognize the grant of nationality, the ICJ described nationality as a “legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.”³²

This decision was handed down shortly before the 1958 Geneva Convention on the High Seas (1958 Convention) required a ship to have a genuine link to the flag State,³³ in language identical to the current requirement in Article 91 of the 1982 UN Convention.³⁴

More recently the International Tribunal on the Law of the Sea (ITLOS) concluded³⁵ that the purpose of the provisions of the 1982 UN Convention³⁶ on the need for a genuine link between a ship and its flag State is to *secure more effective implementation of the duties of the flag State* and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States. The Tribunal also found no support in the 1986 Convention on the Conditions for the Registration of Ships (not yet in force) that a State could refuse to recognize the right of a vessel to fly the flag of a State on the ground that there is no genuine link between the ship and the flag State.

It therefore does not appear productive to focus on what constitutes a “genuine link” as a prerequisite for vessel registration; instead, current jurisprudence views flag State duties and responsibilities as a consequence of the grant of ship's registration. As noted above, the genuine link requirement was imported from the relationship between individuals and States, and the situation between ships – with their trail of nationalities – and States is dramatically different.

The Joint FAO/IMO Ad Hoc Working Group tasked by the General Assembly³⁷ with establishing the criteria for defining a genuine link did not do so. They agreed there was little benefit

-
- prohibit vessels flying its flag from sailing until they can proceed to sea in compliance with the requirements of international rules and standards;
 - investigate violation of international rules and standards and where appropriate institute proceedings irrespective of where the violation occurred; and
 - provide by laws and regulations penalties of adequate severity to discourage violations of applicable international minimum rules and standards, wherever they occur.”

³⁰ The Conference for the Codification of International Law, held at The Hague in 1930, inserted in Article 1 of the Convention relating to the Conflict of Nationality Laws, a provision that the law enacted by a State for the purpose of determining who are its nationals “shall be recognized by other States in so far as it is consistent with . . . international custom, and the principles of law generally recognized with regard to nationality.” In the same spirit, Article 5 of the Convention refers to criteria of the individual's genuine connections for the purpose of resolving questions of dual nationality which arise in third States.

³¹ *Liechtenstein v. Guatemala*, 1955 ICJ Rep 4.

³² *Ibid.* In that case, informally called the *Nottebohm* case, addressing the nationality of an individual, the judgment of the International Court of Justice reads in part as follows: According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection *vis-à-vis* another State, if it constitutes a translation into juridical terms of the individual's connection with the State which has made him its national.

³³ Article 5(1).

³⁴ Article 91.

³⁵ “*M/V Saiga*” (No.2), International Tribunal on the Law of the Sea 1999.

³⁶ And the 1958 Geneva Convention on the High Seas, Article 5.

³⁷ See footnote 26.

in attempting to define the concept of "genuine link" between a vessel and the State whose flag it flies and instead addressed the key issues that might constitute effective flag State control of a fishing vessel."³⁸ In addition, the FAO IPOA-IUU simply provides that: "A flag State should ensure, before it registers a fishing vessel, that it can exercise its responsibility to ensure that the vessel does not engage in IUU fishing."³⁹

This approach, applying to all flag States, indicates it is not just the open registry flag States that avoid responsibilities. In fact, some of them are taking positive steps towards effective flag State control.

The purpose of this paper is to review activities relating to the fishing fleets of States that operate open registries, and in particular to assess the extent to which flag State control measures are being implemented by those States.

The post-UNCED international instruments reflect the increasing international consensus that the effective exercise of flag State responsibilities is key to the future of the global fisheries resource. A review of the provisions in the international instruments relevant to the exercise of flag State responsibility is in FAO Circular 980.

The rationale for the operation of open registries is addressed below, noting the interests of and benefits to open registry States, shipowners and fishing vessels. Effective flag State control is then addressed. For open registry States, general information relating to registration procedures is set out, and national policy, laws and administrative arrangements described, with a view to assessing the effectiveness of flag State control. The experience of key RFMOs with fishing activities by open registry flag vessels, and open registry States is presented, noting the sanctions and enforcement action that has been taken against open registry States and fishing vessels. Available information on offences by vessels operating under open registries, and their disposition by the flag State and the RFMOs is also described.

RATIONALE FOR THE OPERATION OF OPEN REGISTRIES

The rationale for the operation of open registries can be described in terms of the benefits to the open registry State and the shipowner. Not surprisingly, these benefits are, for the most part, economic. But may be too simplistic to describe the rationale for open registries simply in terms of cash: two other undercurrents influence the operation of open registries by States: one is the political will of States to comply with international requirements, and the other, for those that are not inspired by such a will, is the cost of non-compliance in terms of trade and related sanctions.

Therefore, even if the rationale for operating open registries is largely based on economic benefits for both open registry States and shipowners, it can be tempered to varying degrees by compliance with international instruments and standards. The rationale underlying such compliance is also a significant factor in assessing options for the way forward.

Operation of open registries by States

Approximately 29 States maintain open registries that include fishing vessels. Whether an open register is State owned⁴⁰ or franchised out to a commercial entity,⁴¹ a compelling rationale for the

³⁸ The Report of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unregulated and Unreported Fishing and Related Matters, Rome, Italy, 9-11 October 2000 paragraph 24.

³⁹ Paragraph 35.

⁴⁰ e.g. Cyprus and Malta.

⁴¹ e.g. Liberia, Marshall Islands, St. Vincent and the Grenadines and Vanuatu. Also, International Registries Inc. (IRI) is a U.S.A.-based company which administered the Liberian register until Liberia transferred the operation of its shipping registry to a newly formed company also located in the USA, the Liberian International Shipping Registry (LISCR).

operation of open registry systems is the economic benefits they bring to the flag State.⁴² Economic benefits could be realized in the following ways:

- tonnage taxes and registration fees;
- franchise and/or royalty fees; and
- reduced government expense due to outsourcing.

Secondary, although much less significant, benefits may be sourced from the revenue arising from incorporation, taxes and other fees associated with meeting residency requirements⁴³ and potential job creation.⁴⁴

Data from Lloyd's Maritime Information Services, detailed in FAO Circular 980, shows revenue received from all vessels by 21 States operating open registries. Of the 21 open registry States, with a total of 1335 fishing vessels (representing 7% of all vessels registered in these States), the revenue from fishing vessels totals US\$ 3 083 100 or 4.9% of the gross revenue from all vessels.

Even considering that these values are most certainly underestimates,⁴⁵ the data demonstrates that the percentage of revenue from fishing vessels is relatively small but revenue received from all vessels by open registry States is not insignificant.

Some States have introduced offshore, or international registries in order to give their national fleet owners access to the same conditions of trade that are enjoyed by the open registries, without diverting their business to another flag State.⁴⁶ The offshore registries generally have less stringent conditions than the national registries, but are a responsible response to the flag of convenience alternative.

Some international registries operate as businesses designed to make a profit and can be bought and sold just like any other business. These businesses operate on market economies – the more vessels registered the cheaper the administration cost. It can result in a win-win situation for the register and the shipowner.⁴⁷

However, the realization of profit doesn't always mean investment in an effective control system. There can be an economic downside because some open registry States lack the means, will or resources to put in place effective control systems for fishing vessels. Some practical difficulties have been experienced by some countries that have decided to establish a separate register for fishing vessels include the lack of expertise and capacity in fisheries administrations that are tasked with operating a ship's register.

In addition, maritime administrations must cope with a constantly changing legal landscape in respect of all vessels. The implementation of changes to international rules, particularly those impacting seafarers welfare, ship safety and marine pollution,⁴⁸ the increasingly complex application

⁴² Note that registries include fishing vessels with the merchant fleet, and do not exclusively cater for fishing vessels. Information is not available that indicates the extent of additional costs, if any, of including fishing vessels on the register. If they are small, it could be that the revenues would appear relatively large to the open registry State, even though the number of fishing vessels on the register is proportionately low.

⁴³ e.g. incorporation of shipowning companies and establishing domicile in State of registration.

⁴⁴ e.g. for the crew, and administration of the shipowning company.

⁴⁵ FAO Fisheries Circular FIIT/C949 *An Analysis of the Vessels over 100 Tons in the Global Fishing Fleet*, FOA Rome 1999. Also note that the revenue estimates as derived from the annual registration fee alone could represent approximately half of what would be collected from the supply of other documentation.

⁴⁶ For example, Norway, Denmark, Faeroes, Spain and Portugal.

⁴⁷ For example, Liberia International Ship Registry Corporation and International Registries Inc.

⁴⁸ For example, SOLAS Convention has undergone changes from 1948 through 1960, though 1974 and various subsequent amendments to the 1974 Convention. Therefore, for example, in the case of an older ship, parts of the 1960 Convention will

of these rules⁴⁹ and the often vague technical requirements⁵⁰ to apply these rules make it difficult for these administrations, small and large, to keep abreast of developments.

For these changes to be effective, national lawmaking systems must also keep pace. This can be difficult where backlogs and procedural quagmires exist in national legislatures. With limited resources, maritime administrations, particularly smaller ones, are often not able to keep pace with changes and meet new international standards. One result is that a State may avoid the morass by not participating in the relevant conventions.⁵¹

The increasing regulatory burden extends to fisheries conservation and management measures. For example, implementation of the UN Fish Stocks Agreement requires States to take certain measures regarding their vessels that fish on the high seas, including with respect to licensing and enforcement.

In summary, the operation of open registries by States may be profitable but there are two limiting factors in relation to fishing fleets:

- the revenue from fishing vessels appears to be relatively small compared to that from the merchant fleet; and
- the operation of open registries is subject to a range of changing requirements, including those applicable to fishing vessels, which may lead to an increase in administrative costs and a need for capacity-building.

Use of open registries by shipowners

The rationale for use of open registries by shipowners is both legal and economic. Stringent regulatory requirements and the burden of social charges on employers are clear factors contributing to the growth of the use of open registries.⁵² Having the choice of flag, and therefore nationality, allows vessel operators to control operational costs of the vessel.⁵³

Benefits to shipowners of using an open register are, for the most part, economic in nature and derive from:

- low or no vessel restrictions;
- favorable tax environment;
- low administration and registration fees;
- no (or easy-to-meet) nationality requirements;
- quick and efficient registration process;

apply, parts of the 1974 Convention will apply and parts of the various amendments and Protocols adopted since 1974 will apply.

⁴⁹ For example, some provisions apply to existing vessels, some to new ships, some to all ships, some to ships meeting certain conditions and some only to certain ship types.

⁵⁰ For example, the 1998 Maritime Safety Committee issued Circ. 847 entitled "Interpretations of Vague Expressions and other Vague Wording in SOLAS Chapter II-2", MSC/Circ. 847 dated 12 June 1998 Maritime Safety Committee 69th Session.

⁵¹ But it is possible that the non-participation by States may change in the future, regarding safety at sea with the creation of the IMO Whitelist. The Whitelist lists States deemed to be giving full effect to the revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 95). A position on the Whitelist entitles other Parties to accept, in principle, that certificates issued by or on behalf of the Parties on the Whitelist are complying with the STCW 95 (IMO Maritime Safety Committee 73rd Session 27 November – 6 December 2000).

⁵² Fishing in Europe Fact File #6 February 2001.

⁵³ Note that a comparison of registration costs between open registry States and other States does not appear in this paper. While it would be useful in determining economically-based motivation in some cases, it would be very difficult to draw general conclusions. Variable factors would include the policies, laws and administrative practices of each State of registry, whether open or not, specific benefits being sought by the shipowner (e.g. low registration fee, avoidance of legal obligations), and the specific States of registry that are options for specific shipowners. Information available in the public domain does not assist in defining the motivation or options of individual shipowners.

- flexible manning requirements;⁵⁴
- lower operational costs of the vessel.⁵⁵

Some of the benefits advertised to shipowners of registering in open register States are detailed in FAO Circular 980.

Use of open registries by fishing fleets

The principal rationales underlying the use of open registries by all shipowners, discussed above, would also apply to shipowners of fishing fleets: the impressive range of economic and administrative incentives to sharpen their competitive edge and simplify their business obligations. Recent trends show an increasing use of open registries by fishing fleets of all sizes,⁵⁶ and these and other possible rationales are discussed below.

Increase in number of fishing vessels on open registries

There is an increasing number fishing vessels registered on open registries, but no figures are available to show if this also represents an increasing proportion of the global fishing fleet. FAO Circular 980 details the number of fishing vessels on some open registries from 1997 and 2001. It shows an increase of 208 fishing vessels registered in that period, bringing the total to just over 1500 vessels. The number of vessels registered with individual open registries has shifted dramatically in some cases. With more information, this could afford some indication as to the rationale for registration. Unfortunately, information regarding the origin of any reflagged vessels is not available. Some observations between 1997 and 2001 are:

- the number of fishing vessels on Belize's register has more than tripled in size to 481 vessels (an increase of 332%);⁵⁷
- the decrease of fishing vessels on Panama's register was about 54% by number and about 70% by percentage;
- Honduras' register changed little;
- the number of fishing vessels on the registries of Saint Vincent and the Grenadines, Cyprus, Vanuatu, and Netherlands Antilles increased with a corresponding increase in the percentage of fishing vessels registered;
- there was little or no change in the smaller registries: Malta, Bahamas, Barbados, Singapore, Liberia, Isle of Man, Antigua and Barbuda, China, Hong Kong, Special Administrative Region (SAR), Gibraltar.⁵⁸

Vessel size

There does not seem to be a correlation between vessel size and use of an open register by fishing vessel owners. For vessels between 100 and 1 000 GRT, there are between 100 and 300 vessels registered in each of the five divisions shown in FAO Circular 980, and there are almost 100 registered in the 1 500 to 4 000 GRT category. This shows a relatively even distribution of registered vessels, not size-dependent.

⁵⁴ ITF considers that many shipowners register in open registry States as a result of those State's reduction in manning requirements and flexibility in the choice of the nationality of the crew. ITF *Troubled Waters*.

⁵⁵ For example, the USA requires that crew on USA flagged vessels are supplied locally, where employment-related costs impose higher financial burdens on vessel owners than employing crew from another State that does not have such obligations. The Netherlands Antilles is one such State that has no nationality or employment requirements for crew members and non-resident crew members are not subject to any national income or wage taxes or social security premiums.

⁵⁶ Lloyds Maritime Information Services and Lloyd's Register - Fairplay Ltd. *World Fleet Statistics 2001*.

⁵⁷ Based on Lloyd's Register - Fairplay Ltd. *World Fleet Statistics 2001* which differs from the number of 402 provided by Belize in response to the questionnaire. Either figure places Belize at the top of the open register list.

⁵⁸ In response to the questionnaire (February 2002) Antigua and Barbuda, Gibraltar, and Liberia stated that there were no fishing vessels on their registries.

Unfortunately the information does not show the proportion this represents of fishing vessels worldwide in each category, so it is not possible to deduce whether a rationale for registration depends on the vessel size.

The opposite conclusion might be drawn: size is probably not a factor, especially when compared to "all vessels" as shown in FAO Circular 980, which shows that the bulk of all registered vessels ranges from 1 500 to more than 30 000 GRT.⁵⁹ This reflects the larger size of merchant vessels, but also ties in with notions of maximum returns for big investments.

Possible rationales

A possible rationale for fishing vessels to migrate to, or enter an open register is the freedom of unregulated fishing because of the absence of any flag State control. Some factors which should be considered in assessing this rationale are whether the originating or national State is party to international instruments and/or RFMOs, and implements its obligations on the one hand, and the open registry State is not party to such instruments or RFMOs and does not implement any provisions or requirements.

Originating State Party to International Instruments

In order to assess whether the rationale for migrating to an open register is because the originating State – or State of registration prior to migration – is party to relevant international instruments, it is useful to review the ratification "scorecard". While most States, even most open registry States,⁶⁰ are party to the 1982 UN Convention, many vessels that re-flag to open registry States originate in States that are not party to the UN Fish Stocks Agreement or the FAO Compliance Agreement. For example, vessels originating in Greece, Spain, Germany, France and Portugal, which have signed, but not ratified the UN Fish Stocks Agreement and have not signed the Compliance Agreement, are apt to re-flag to open registry States.⁶¹

Open Registry State Party to International Instruments

A number of open registry States have either ratified or signed the UN Fish Stocks Agreement: eight have ratified,⁶² and nine have signed.⁶³ Four open registry States have accepted the FAO Compliance Agreement.⁶⁴

Notably, Belize, Panama and Honduras, three of the largest fishing registries, have not ratified the UN Fish Stocks Agreement (although Belize has signed it) or the FAO Compliance Agreement. Morocco, with the third largest number of fishing vessels on its register, has not signed the 1982 UN Convention but has accepted the FAO Compliance Agreement.

No firm conclusions can be drawn establishing a motivation by the shipowner to select an open register State based on the State's ratification, or not, of international instruments.

⁵⁹ The fishing fleets constitute a relatively small proportion of the vessels on the larger open registries, with the exception of Honduras and Belize. Details are in FAO Circular 980.

⁶⁰ Twenty-eight of the States operating open registries have ratified the 1982 UN Convention. The States which have not are: Cambodia, Liberia, Morocco, and Tuvalu.

⁶¹ McKenna Report *op cit*. Signatures and ratifications as of January 8, 2002. In total, the McKenna Report states that 392 fishing vessels or fish transport vessels are flagged outside the EU, or over 10% of the total EU – owned fleet. Almost 30% of the Greek-owned fishing fleet is flagged outside the EU and 19% of the Spanish fleet. The other three, Germany, France and Portugal, each have 8-11% of their fleet flying non-Community flags.

⁶² As of January 8, 2002, Bahamas, Barbados, Cook Islands, Malta, Mauritius, Samoa, Seychelles, Tonga have ratified the UN Fish Stocks Agreement.

⁶³ As of January 8, 2002, Bahamas, Belize, Marshall Islands, Mauritania, Morocco, Netherlands, Seychelles, Tonga and Vanuatu have signed or declared the UN Fish Stocks Agreement.

⁶⁴ As of August 14, 2001, Barbados, Cyprus, Morocco, Seychelles have deposited instruments of acceptance.

Implementation of International Instruments by open registry States

Would a shipowner move away from an originating or open registry State that implements the instruments, even if it is not party?

Practical implementation of compliance measures is discussed below in relation to actions taken by open registry States and RFMOs. As a result of these actions, open register States such as Belize, Malta, Vanuatu and Panama have been active in encouraging flag State compliance through strategies such as deregistration and prosecution for offences. But still, the number of fishing vessels on open registries continues to grow.

It would seem that practical implementation of the instruments by the flag State, whether or not it is party, may not, in some cases, be a contributing factor to the shipowners' choice of flags.

Avoidance of International Conservation and Management Measures of RFMOs to which the originating State is Party

Membership in RFMOs by the originating State may provide the rationale for originating States to flag into open registries. Based on EU data,⁶⁵ France, Germany, and Spain are members of CCAMLR,⁶⁶ France is also a member of IATTC, IOTC and GFCM.⁶⁷ As discussed below, CCAMLR has been proactive in implementing conservation and management measures and encouraging flag State control. IATTC and IOTC have also implemented compliance measures for flag States. This suggests that, at least for vessels from originating States which are members of RFMOs and which fish in the relevant Convention Areas, there may exist a rationale for its vessels to flag under a State which is not a member of the relevant RFMO and thereby avoid compliance requirements.

This analysis, however, does not hold true in all cases. For example, the majority of Spanish vessels which flag out are flagging into Honduras, Panama and Morocco which are members of ICCAT and are required to implement the conservation and management measures under ICCAT.

This situation suggests that some originating States are not re-flagging to avoid the implementation of compliance provisions of conservation and management measures of RFMOs.

Reregistration after deregistration of vessels by originating States to reduce capacity

Fishing fleets that exceed set limits will suffer economically if required to reduce capacity. To circumvent this problem, where some States deregister their vessels to reduce capacity, the vessels are re-registered on an open register that is not subject to the same capacity requirements.

The extent of this process is not known and therefore its basis as a rationale for reflagging is also not known. However, it is known that EU vessels receive public aid to leave the EU Community register and often re-flag to a flag of convenience. Exactly how many vessels receive subsidies for this purpose is not known, but preliminary investigation found that at least one Member State which re-flagged to the Côte d'Ivoire received Euro 1.1 million. Its current flag is Belize but the owner is the same.⁶⁸

Currently, there is no provision to prohibit the granting of subsidies for transfer to FOCs. However, a new proposal by the EC would prohibit public funding from being used for transfer of EU-flagged vessels to countries which are not Contracting or Cooperating Parties to the relevant regional fisheries organization, and which have been identified by such organizations as permitting fishing in a

⁶⁵ McKenna Report, Revised Working Document 3.

⁶⁶ Greece is a party but not a member of the Commission.

⁶⁷ This excludes France on behalf of St. Pierre and Miquelon.

⁶⁸ McKenna Report, Revised Working Document 3.

manner which jeopardizes the effectiveness of international conservation measures. This proposal would discourage reflagging to avoid capacity limitations and would build on regional efforts to identify the States that do not exercise effective flag State control.

Other possible rationales

Other motivations for fishing vessels to use open registries may include:⁶⁹

- the realization of short term profit offered by certain fisheries;⁷⁰
- the avoidance of financial difficulties fitting vessels with regulatory gear;
- securing a return on major investment; and
- the perceived weight of tradition where such fishing has taken place for generations.

A fishing vessel's competitiveness, the source of its income, is improved by greater access to resources and avoiding constraints imposed in a vessel's originating State. These benefits are even more important to a participant in those fisheries where fishing capacity exceeds the resource.

The growing percentage of fishing vessels in open registries is perhaps the best evidence of the benefits underpinning the rationale for registration – whether they are based on considerations of safety, labour, or freedom to fish. There appears to be no specific rationale that would apply to all vessels which use open registries. The rationales may be linked directly to fisheries, including the avoidance of fisheries conservation and management measures under international instruments implemented by the originating State or by RFMOs to which an originating State belongs. Alternatively, the rationale may relate to operational costs of owning and/or operating a ship which are generally lower in open registry States, or to the fact that many open registry States are attractive tax havens. It is likely a combination of any one or all of the rationales discussed which motivates vessels to use open registries.

Economic motivations for open registry States to implement flag State compliance measures

If the rationale behind maintaining an open register is largely economic, it would follow that open registry States are motivated to implement their compliance responsibilities when they are economically adversely affected. Several economic-related initiatives have been implemented which have encouraged some open registry States to take compliance action.

For example, ICCAT restricted international market access for catches from vessels engaging in IUU fishing in the Convention Area. ICCAT collected information on illegal fishing activities based on market data, vessel sightings and other relevant data and implemented import bans into all ICCAT Contracting Parties for:⁷¹

- bluefin tuna from Belize, Equatorial Guinea and Honduras;
- swordfish from Belize and Honduras; and
- bigeye tuna from Belize, Cambodia, Equatorial Guinea, Honduras and St. Vincent and the Grenadines.

This tactic has proven effective; a range of actions has been taken by States which have been warned that they may be subject to import bans if they do not control their fishing fleets. These include initiating control programs, taking actions against some offending vessels and canceling fishing

⁶⁹ Fishing in Europe Fact File #6 February 2001.

⁷⁰ For example, Patagonian toothfish and Atlantic tuna fisheries.

⁷¹ European Parliament Committee on Fisheries. Report on the role of flags of convenience in the fisheries sector, 20 November 2001; rapporteur Patricia McKenna.

licenses. Panama and Honduras joined ICCAT and Panama rectified the situation sufficiently to have its import ban on bluefin lifted.

Other positive steps taken by open registry States include:

- Honduras requires international fishing vessels to sign an affidavit not to fish for tuna before being registered;
- Belize requires a fishing vessel data form to be filed with an application for registration, and has also taken initiatives to “clean up” its register;⁷² and
- Malta requires its vessels to have a fishing authorization prior to registration.

Some States, including Honduras and Belize, have removed vessels from their register. Without additional action, the act of deregistration alone simply exports the problem as those vessels re-flag in another more lenient State.

Similar trade-related actions have been taken by CCAMLR and CCSBT which also produced successful compliance results.⁷³

EFFECTIVE FLAG STATE CONTROL

Introduction

The purpose of this Part is to evaluate the effect of fishing vessels from open registry States on fisheries management when effective flag State control is and is not applied.

To assist in this evaluation, questionnaires were distributed to open registry States and RFMOs. The extent of implementation of flag State responsibilities as agreed in international instruments and the effectiveness of existing flag State control measures were assessed through responses to these questionnaires. The objectives of the questionnaires were to describe the:

- activities that result from States not exercising effective flag state control over fishing fleets; and
- extent and effectiveness of implementation of flag State control measures prescribed under international instruments.

Responses to the questionnaire provide an idea of the scope for strengthened flag State control and a realistic basis for future action to achieve the objective of long-term sustainable use of the fisheries resource. Copies of the questionnaires appear in FAO Circular 980.

For information, a table of fishing vessel registration by national register is in FAO Circular 980. Approximately 8 per cent by number, or 11% of registered fishing vessels over 100 GRT operate under open registries.⁷⁴ Of the 11 largest fishing registries in the world, 3 are operated by open registry states.

⁷² “Belize flag weeds out 668 ships to polish tarnished image” *Lloyds List* January 16, 2002.

⁷³ See FAO Circular N° 980.

⁷⁴ Antigua and Barbuda, Bahamas, Belize, Cambodia, China, Hong Kong, SAR, Equatorial Guinea, Honduras, Liberia, Malta, Marshall Islands, Mauritania, Mauritius, Morocco, Netherlands Antilles, Cook Islands, Panama, Samoa, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Togo, Tonga, United Kingdom (Bermuda, Gibraltar, Isle of Man), Vanuatu.

Open registry States

The extent of flag State control by open registry States is influenced by a number of factors including the type of fishery, presence of international pressure exerted through other States⁷⁵ or RFMOs, and whether the State is a member of an RFMO. It is difficult to draw any conclusions linking the shipowner's selection of an open register State with that State's ratification, or not, of international instruments. However, the implementation and enforcement of international conservation and management provisions by States directly or through RFMOs may influence the register a vessel owner chooses.

Input on effective flag State control was sought from 25 open registry States in the form of a questionnaire. A summary of the States polled appears in FAO Circular 980, as does contact information for the open registry States that register fishing vessels.

States identified as operating an open register⁷⁶ were asked to comment or provide information on the following:

- general information on registration procedures;
- national policy, legislation and administrative arrangements; and
- international instruments and agreements.

Responses were received from 12 States, eight of which indicated that they do not register fishing vessels.⁷⁷ Belize, Cook Islands, Malta and Vanuatu provided substantive information in response to the questionnaire. Limited information on other open registry States⁷⁸ was obtained from public sources and is included where available.

General information on registration procedures

The States were asked to provide information on the following subjects respecting the requirements for vessel registration:

- a) What are the requirements for vessel registration?
- b) Are there any restrictions on registration?
- c) Can a vessel be de-registered for violating the law?
- d) What information is required for an application?
- e) How are applications received and processed?
- f) What is the timing and how is a decision made to approve an application?

A summary of their responses is provided in FAO Circular 980.

In 2002, there were 6 fishing vessels registered and 10 under review for registration on Cook Island's register, 88 on Malta's register, 122 on Vanuatu's register and 402 on Belize's register, making Belize among the ten largest fishing vessel registries worldwide (detailed information in FAO Circular 980).

All four States have administrative arrangements and legislation in place to manage the registration process for fishing vessels. The Cook Islands Registry has undergone some recent changes

⁷⁵ Canada was successful in concluding bilateral agreements on flag State control with open register States such as Panama in the mid-1990s, but Canadian officials did not provide the relevant information when requested.

⁷⁶ Information regarding the States that operate open registries was received from FAO, ITF, RFMOs and various websites. The list may be incomplete. Not all States on the list were contacted.

⁷⁷ Antigua and Barbuda, Barbados, Bermuda, China, Hong Kong, SAR, Liberia, and Singapore.

⁷⁸ Antigua and Barbuda, Cambodia, Cayman Islands, Honduras, Netherlands Antilles, Panama and Saint Vincent and the Grenadines, obtained from www.flagsofconvenience.com.

and in May 2001 was taken over by the Cook Islands Maritime & Shipping Registry (CIMSRL). If the application and accompanying documents are in order, registration can be accomplished in less than a day⁷⁹ but may take up to three weeks.⁸⁰

Prior to awarding permanent registration, some open registry States require an applicant to provide a certificate or other evidence that the vessel has been deleted from its previous register.⁸¹ A certificate of deletion is an important means of ensuring vessels are not registered on more than one registry.

However, to be effective, all States should require them. If a State does not require a deletion certificate, then it becomes much easier for vessels to flag-hop – i.e. be flagged in more than one State and avoid a State's enforcement measures. For example, Belize has found that vessel owners are not obtaining deletion certificates from Belize, implying the vessel is flag-hopping. This imposes constraints on Belize's enforcement activities.

All four registries have restrictions as to the age of the vessel which may be registered. Some registries refuse to accept vessels over a certain age (e.g. Belize)⁸² while others may subject the older vessels to conditions prior to registration (e.g. Cook Islands).⁸³

Two of the registries also have nationality requirements respecting ownership of the vessels.⁸⁴

Two of the registries have special requirements for fishing vessels. Belize requires a Fishing Vessel Data Form to be completed as part of application process and Malta requires that a fishing vessel be licensed to fish prior to registration.⁸⁵ Prior to registering an international fishing vessel, the Honduras registry requires that the vessel submit an affidavit not to fish tuna.⁸⁶ This requirement is in accordance with a resolution adopted by ICCAT. If the affidavit is not presented, a clause prohibiting fishing for tuna will be included at the back of the certificate for registry.

Belize, Malta and Vanuatu have legislative provisions regarding the deregistration of vessels for non-compliance.

In Belize, registration may be cancelled if a vessel is:

- registered in another State without the consent of IMMARBE (Belize's registry);
- engaged in illegal activity or in the event of violation of International Convention ratified by Belize; or
- in serious violation of bilateral or multilateral agreements to which Belize is a signatory or cooperating party.⁸⁷

In response to international pressure, mostly exerted through ICCAT, Belize has de-registered vessels for illegal fishing in conservation areas. Belize has also deregistered vessels for non-

⁷⁹ Belize, Cook Islands and Malta.

⁸⁰ Vanuatu.

⁸¹ Belize, Cook Islands, Malta, Vanuatu, Cambodia and Honduras (See www.flagsofconvenience.com)

⁸² Belize does not accept vessels over 30 years old.

⁸³ Cook Islands requires special process for vessels over 15 years old. Malta and Vanuatu also have inspection requirements for older vessels.

⁸⁴ Malta and Vanuatu, but note that Malta's nationality requirements are easy to meet. Vanuatu's nationality requirements can be waived if there is an absolute and genuine need (not defined). Establishment of a company in Vanuatu is a relatively simple and quick process.

⁸⁵ However, only fishing vessels 6 metres and over must be registered.

⁸⁶ www.marinemercante.hk/registry2.html

⁸⁷ Registration of Merchant Ships (Disciplinary) Regulations, 1999-S.I. Number 56.

compliance with safety regulations, not responding to requests for inspections, and drug trafficking. The deregistration process is part of Belize's quality initiatives.⁸⁸

Malta's "Closure of Registry" provisions allow the deregistration of vessels where "it is in the national interest or in the interest of Maltese shipping".⁸⁹ No specific language requires deregistration in the event of failure to comply with fisheries conservation and management measures or relevant international agreements. In practice, however, in the past two years, three fishing vessels have been de-registered due to administrative reasons.

In Vanuatu, vessels can be deregistered for violations of the Maritime Act⁹⁰ or other international agreements relating to fishing. Deregistration may be based on requests by owners, but also may be implemented for violations of fishing agreements or failure to respond to inquiries from the registry.

Although no vessels have been de-registered since May 2001 when CIMSRL took over the Cook Islands registry, CIMSRL recognizes there is a gap in the legislation in this respect and reports it is attending to the matter.

In response to a letter of complaint by ICCAT that Honduran flagged vessels were fishing for tuna in contravention of the ICCAT Convention and from pressure due to import restrictions imposed on Honduras by ICCAT, the Merchant Marine of Honduras took immediate steps to cancel the registration of all international fishing vessels denounced by ICCAT.⁹¹ Furthermore, the General Directorate of Honduras took the irrevocable decision of cancelling or suspending all the international fishing vessels included in its registry. Up to October 2000, of a total of 269 vessels included in the Honduran fleet, 228 vessels have been cancelled and 41 have been suspended.⁹²

The Merchant Marine of Honduras will maintain a registry closed to international fishing vessels while the pertinent authorities of Honduras takes measures towards compliance with the ICCAT Convention. The Merchant Marine also made a formal commitment not to proceed to the registration of any international fishing vessels without first informing the competent body of ICCAT and assuring that those vessels that are registered comply with ICCAT Convention.⁹³

National policy, legislation and administrative arrangements

The States were asked several questions respecting the existence of national policies, legislation and administrative arrangements that implement international requirements, and enable flag State control to be exercised over vessels listed on the registry. States were also asked to provide information on their involvement, if any, in RFMOs.

Policy

All four responding open registry States have some form of policy, official or otherwise, and legislation respecting flag State control. Malta did not provide any details on its policy.

Belize derives its policy respecting flag State control from the 1982 UN Convention⁹⁴ and other international agreements. The policy statement is contained in the Registry's ISO 9002 approved

⁸⁸ See Part IV, 2.1 of FAO Circular No 980.

⁸⁹ Merchant Shipping Act, Articles 28 and 29, "Closure of Registry".

⁹⁰ CAP 131.

⁹¹ Of the 101 vessels denounced by ICCAT, 61 were included on the Honduran registry.

⁹² Report of the 9th Meeting of the Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures (PWG), November 2000.

⁹³ Detailed in FAO Circular No 980.

⁹⁴ Article 94

Quality Manual. In addition, on November 1, 2001, Belize introduced a multi-phase Action Plan⁹⁵ in an attempt to "clean up its ship register's tarnished image."⁹⁶ As a result of this initiative, 668 ships were deregistered from Belize's books in 2001.

The Cook Islands does not have official government policy respecting flag State control, however, CIMSRL intends to become a desirable flag for the registration of high quality fishing vessels. To this end, CIMSRL is currently undergoing a legislative review with the intention of introducing legislation to enable the Cook Islands to seek accreditation for EURI certificates of origin. CIMSRL has also an internal policy to exert maximum control over its fleet. CIMSRL intends to achieve this by dealing with vessels only through its own staff for purposes of registration and appointing its own independent inspectors to act for it.

Vanuatu does not have a policy in place, but does have new draft fisheries legislation which covers flag State responsibilities, including the monitoring of vessels by use of transponders.

Legislation

The legislation for all four States provides for offences and enforcement action for non-compliance. In Belize, enforcement includes prohibition from sailing, fines up to US\$50 000, deregistration, and notification to IMO.⁹⁷

Cook Islands legislation⁹⁸ provides for various offences, including failure to meet safety standards, which are punishable, if convicted, by fines.⁹⁹ Compliance is enforced through inspectors who are located in ports where Cook Island vessels operate. No enforcement actions have been taken since CIMSRL took over the registry. No information was available on Cook Island's sanctions to secure compliance with international conservation and management measures as this matter is not within CIMSRL's jurisdiction.¹⁰⁰

Enforcement action by Malta includes deregistration and fines.¹⁰¹

In Vanuatu, enforcement is provided in draft legislation and action will be carried out by the Ship Registry and Vanuatu Maritime Authority.

All States identified constraints to taking enforcement action. For Belize, the problem is vessels re-flagging to another registry without seeking a deletion certificate from Belize's registry and thereby avoiding Belize's penalties and enforcement measures. Malta identified the need to improve the monitoring of fishing vessels' operators.¹⁰²

In its attempts to introduce higher standards to the small fishing register, CIMSRL is experiencing resistance mostly in the form of objections associated with the cost of meeting the standards. Since CIMSRL's involvement in the registry, more vessels have been refused registration than accepted.

⁹⁵ Elements of the Immurbe Action Plan are described in FAO Circular 980.

⁹⁶ Lloyd's List Registers Wednesday January 16, 2002 "Belize flag weeds out 668 ships to polish tarnished image".

⁹⁷ Registration of Merchant Ships (Disciplinary) Regulations, 1999-S.I. Number 56 and Registration of Merchant Ships (Fishing Vessels of 24 metres in length and above) Safety Regulations, 1995, section 27(1).

⁹⁸ Shipping Amendment Act 2000, No. 21, Part III.

⁹⁹ Legislation not provided.

¹⁰⁰ This matter falls within the jurisdiction of the Ministry of Marine Resources, which was unable to provide input to the questionnaire responses prior to the deadline for incorporation into this paper.

¹⁰¹ Merchant Shipping Act (Cap. 234), particularly Articles 28 and 29 on "Closure of Registry" and the Fisheries Conservation and Management Act (Cap 425), 2001.

¹⁰² Malta indicated that steps are being taken to address this issue.

Vanuatu indicated that enforcement may be hampered by geographic isolation of the fishing vessels from Vanuatu and/or the Registry. Accurate reporting and positive identification are critical and in some cases have not been provided to the Registry in the past from enforcement agencies.

Sanctions are imposed according to legislation, which may include fines and deregistration. In Belize fines range up to \$50 000 US\$ and in Malta they range from 200 to 25 000 liri.¹⁰³ All States indicated that deregistration is a potential measure to address non-compliances.

Administrative arrangements

All responding States have administrative arrangements in place that implement flag State responsibilities. In the Cook Islands, the new CIMSRL administers registration and safety standards and the Ministry of Marine Resources administers fisheries matters. Belize has several administrative arrangements including: General Safety Inspectors, Deputy Registrars, Recognized Organizations, Director-General, Solicitor General/Attorney General, Ministry of Foreign Affairs. The Merchant Shipping Directorate of Malta Maritime Authority (a Government agency) performs the duties of a Maritime Administration in Malta. New legislation in Vanuatu, aimed at implementing flag State responsibilities, will include inspections and important electronic monitoring of fishing fleets using transponders. A new tuna management plan has been drafted and implemented for Vanuatu as a first start on a local basis. It provides that Vanuatu flag vessels will not be considered local for the purposes of fishing licence issuance unless they fulfil ownership criteria.¹⁰⁴

All responding States are involved in RFMOs: the Cook Islands is a member of the FFA, Belize is currently an observer in ICCAT, but intends to join as a cooperating member in the near future, Malta is a member of two RFMOs¹⁰⁵ and Vanuatu is a member of a number of RFMOs and regional arrangements.¹⁰⁶

International Instruments and Agreements

The States were asked whether they had ratified, accepted or acceded to and implemented the 1982 UN Convention, the 1995 UN Fish Stocks Agreement, the FAO Code of Conduct, the FAO Compliance Agreement and the FAO IPOA-IUU. The States were asked to identify any other arrangements or agreements they were party to.

All four responding States have accepted and implemented the 1982 UN Convention. The Cook Islands, Malta and Vanuatu have accepted and implemented the 1995 UN Fish Stocks Agreement. Belize is in the process of introducing new legislation and ratifying the 1995 UN Fish Stocks Agreement.¹⁰⁷ Belize's new legislation will also implement the FAO Compliance Agreement and the FAO IPOA-IUU. Malta recently passed legislation implementing the 1982 UN Convention, the 1995 UN Fish Stocks Agreement and the FAO Code of Conduct.¹⁰⁸ Malta has ratified the FAO IPOA-IUU and is in the final stages of ratifying the FAO Compliance Agreement.¹⁰⁹ Vanuatu has agreed to the FAO Compliance Agreement as well as several other regional agreements.

¹⁰³ Fisheries Conservation and Management Act, CAP 425, 2001.

¹⁰⁴ Ownership criteria in the Tuna Management Plan require that the vessel is "wholly owned and controlled by any company, society or other association of persons incorporated or established under the laws of Vanuatu, of which at least 51% of the shares are owned by citizens of Vanuatu".

¹⁰⁵ Malta is a member of the General Fisheries Commission for the Mediterranean and ICCAT. Belize participates as an observer on ICCAT and expressed an intention to become a cooperating member in the near future.

¹⁰⁶ CCAMLR, IATTC, Palau Arrangement, and the FSM Arrangement.

¹⁰⁷ Belize has ratified and enforces the Fishing and Conservation of the Living Resources of the High Seas Convention 1958. Belize also follows the conservation policies of ICCAT, IATTC, CCAMLR, IOTC, NAFO, NEAFC.

¹⁰⁸ Fisheries Conservation and Management Act (Chapter 425) adopted 4 June 2001.

¹⁰⁹ Malta participated in both the Technical Consultations on the issue of IUU fishing and has agreed to the adoption of the IPOA at the COFI meeting held in March 2001.

Summary

Some open registry States are being proactive in implementing effective flag State control over their fleets, as follows.

- Belize:
 - Action Plan to raise the quality of its register.
 - Deregistration of several vessels found to be engaging in activities contrary to international conservation and management measures.
- Cook Islands:
 - New registry administration in place which is actively working towards raising the quality of its register as well.
- Malta and Vanuatu
 - New legislation to implement international fisheries conservation and management measures.
- Honduras
 - Deregistration or suspension of all international fishing vessels on its register.
 - Implementation of a requirement that each vessel registered sign an affidavit not to fish for tuna.

To a great extent, actions taken have responded to pressures created by the previously unregulated activities of their fishing fleets, but they also are proactive in encouraging compliance by their fleets with international, regional and subregional fisheries conservation and management measures.

Regional fisheries management organizations (RFMOs)

RFMO Secretariats and members are increasingly active in promoting compliance with their respective international conservation and management measures, and implementation of the international instruments. Effective flag State control measures have been implemented by several of the RFMOs. These range in degree according to the RFMO and the problems experienced.

The following activities of RFMOs have served to promote effective flag State control:

- implementation by RFMOs of conservation and management measures through their Conventions;¹¹⁰
- implementation by RFMO Members of international instruments;¹¹¹
- membership in RFMOs by open registry States;¹¹²
- encouragement by RFMOs of non-Contracting Parties to adopt laws and regulations consistent with the provisions of the implementing Convention and/or international, regional or subregional conservation and management measures;
- RFMO rules requiring authorizations to fish, e.g., the IBSFC Fishery Rules¹¹³ provide that all fishing can only take place with an authorization of a Contracting Party;¹¹⁴ and

¹¹⁰ See details on responses to questionnaire.

¹¹¹ NAFO states that currently there are no open registry vessels fishing in NAFO Area and that such activity is not anticipated to occur on a large scale in the near future due to actions by NAFO as well as the application of international instruments developed by UN FAO.

¹¹² For example, IOTC, IATTC.

¹¹³ Fishery Rules of the IBSFC, Rule 2.1: details are in FAO Circular 980.

¹¹⁴ The authorization must be within the Contracting Party's quota and specify the species, quantity, period of fishing and name of vessel. Reference to the authorization must be made in the logbook and produced upon request by control authorities. By this method, IBSFC controls and monitors fishing activity. According to IBSFC, there have been no reports of violations of fisheries conservation and management measures by vessels registered in open registry States.

- exchange of information between RFMOs and non-Contracting Parties, including those from open registry States.¹¹⁵

Input was sought from RFMOs on the actions they took to address the issues associated with the activities of fishing fleets of open registry States was sought from RFMOs by questionnaire, included in FAO Circular 980. A list of the RFMOs polled is in FAO Circular 980; they were asked to provide information relating to the following general areas:

- fishing activities by open registry flag vessels;
- open registry States and the RFMO;
- sanctions and enforcement against open registry fishing vessels.

Of the organizations that responded,¹¹⁶ ten provided information for use in this review. This information is summarized below.

Fishing activities by open registry flag vessels

The RFMOs were asked to comment on the following matters respecting fishing activities by open registry flag vessels:

- Identify activities of open registry vessels that are of concern to the organization.
- Indicate whether such activities undermine conservation and management measures.
- Identify the flags flown by open registry vessels.
- Provide, if available, information on fleet size and vessel type.
- Indicate whether fleet activities would be affected by the exercise of flag State responsibilities.
- Indicate examples of effective flag State controls being exercised by open registry States over fishing vessels.

Seven of the responding RFMOs indicated an ongoing concern arising from vessels flagged in States operating an open registry.¹¹⁷ The concerns include those activities which undermine fisheries conservation and management measures, including IUU fishing,¹¹⁸ increasing volumes of fish being taken,¹¹⁹ unlicensed fishing, unreported catches, lack of control of by-catch, and fishing in excess of allocations.¹²⁰ Failure to comply with international safety and marine pollution prevention measures also created ongoing concerns.¹²¹

CCAMLR reports that over the past five years the percentage of catch that is unreported has been as high as 98%. The extent of the problem in the CCAMLR Convention Area, which reports that flags of ten open registry countries fish in the Area, is shown in FAO Circular 980.

¹¹⁵ e.g. IOTC.

¹¹⁶ CCSBT, CCAMLR, FFA, IATTC, IBSC, ICCAT, IOTC, IPHC, IWC, LVFO, NAFO, NAMMCO, NASCO, NPAFC, PSC, SEAFO, SPC.

¹¹⁷ CCAMLR, CCSBT, FFA, ICCAT, IATTC, IOTC, NPAFC, NAFO and NASCO indicated that there had been problems in the past, but that there were no current concerns. IBSC did not indicate any issues concerning the activities of open registry vessels.

¹¹⁸ In the cases of CCAMLR, ICCAT, IOTC, NASCO, NPAFC.

¹¹⁹ CCSBT.

¹²⁰ NAFO.

¹²¹ FFA.

Six respondents identified the flags flown by open register vessels of concern to their region.¹²² Belize, Honduras and Panama were cited by five of the respondents as fishing illegally, St. Vincent was cited by four respondents, Seychelles and Vanuatu by three respondents, and Cambodia, Cayman Islands,¹²³ Malta, Sao Tome and Principe, and Singapore¹²⁴ by two respondents. Fishing vessels operating under the following open register States were cited by the respondents as fishing illegally: Bolivia, Equatorial Guinea, Liberia, Mauritania, Mauritius, Morocco, Netherlands Antilles, Sierra Leone, Togo, and Venezuela.

Six organizations provided information on fleet size and/or type of fishing vessels that are of concern to that organization's area.¹²⁵ The type of vessels of greatest concern are longliners¹²⁶ and purse seiners.¹²⁷

All responding RFMOs indicated that fleet activities would be affected by the effective exercise of flag State responsibilities. Five respondents identified Belize, Panama, Seychelles, and Vanuatu as open registry States which exercise flag State control,¹²⁸ Seychelles, Panama and Vanuatu are members of RFMOs¹²⁹ and Belize is considering joining an RFMO.¹³⁰

Respondents reported that flag State control was exercised where RFMOs exerted pressure on an open registry State or its fishing vessels, including the imposition of trade measures and fines. For example, ICCAT and CCSBT implemented trade measures which pressured open registry States to comply with the respective RFMOs' conservation and management measures.¹³¹

Actions were also taken by Panama in 1993 against Panama-flagged vessels on the basis of evidentiary material provided by NAFO. Panamanian authorities imposed fines of approximately \$2000 CDN against 11 Panamanian flagged vessels that had been sighted in the NAFO Area. Eventually, the Panamanian Government withdrew registration of these vessels.

Open registry States and the RFMOs

The organizations were asked to respond to the following questions respecting the interaction between RFMOs and open registry States.

- a) Do member States operate open registries?
- b) Does the organization require the exercise of flag State responsibilities in its Convention or other establishing instrument?
- c) Does the organization support the implementation among its members of the relevant international instruments?

¹²² CCAMLR indicated the flags of Belize, Bolivia, Honduras, Panama, Sao Tome and Principe, Seychelles, St. Vincent and the Grenadines, Vanuatu, and Togo.

CCSBT indicated flags of Belize, Cambodia, Equatorial Guinea, and Honduras.

IATTC indicated the flags of Belize, Honduras, Panama, St. Vincent, and Vanuatu.

ICCAT indicated flags of Belize, Honduras and Panama.

IOTC indicated that flags of Cambodia, Cayman Islands, Belize, Liberia, Malta, Netherlands Antilles, Panama, Seychelles, Singapore, St. Vincent, and Vanuatu.

NAFO indicated that in the 1980s and 1990s the flags of concern were from Belize, Cayman Islands, Honduras, Malta, Mauritania, Morocco, Panama, Sao Tome and Principe, Sierra Leone, Vanuatu, and Venezuela.

¹²³ Cayman Islands responded to the questionnaire that it does not register fishing vessels.

¹²⁴ Singapore responded to the questionnaire that it does not register fishing vessels.

¹²⁵ CCAMLR, FFA, IATTC, ICCAT, IOTC, NAFO.

¹²⁶ CCAMLR, IATTC, IOTC, ICCAT.

¹²⁷ FFA, IOTC.

¹²⁸ IATTC, ICCAT, IOTC, NAFO, NASCO.

¹²⁹ Seychelles is a member of IOTC. Panama and Vanuatu are members of IATTC.

¹³⁰ IOTC indicated that Belize and Vanuatu are considering joining IOTC and are then expected to exercise flag State control.

¹³¹ See Part IV, Section 3(c).

- d) Does the organization seek ways of cooperating with open registry States to work towards more effective flag State control?
- e) Has the organization taken measures in relation to open registry States such as adoption of resolutions, refusal of allocations or implementation of sanctions if there is no effective flag State control?

Four of the RFMOs had member States that operate open registries.

Nine of the responding organizations require the exercise of flag State responsibilities in its Convention or other establishing instrument.¹³² For example, NPAFC's Convention Article V-1 provides that *"Each Party shall take all necessary measures to ensure that its nationals and fishing vessels flying its flag comply with the provisions of this Convention."* And in Article IV-3, *"Each Party shall take appropriate measures aimed at preventing vessels registered under its laws and regulations from transferring for the purpose of avoiding compliance with the provisions of this Convention."*

Seven of the responding RFMOs also support the implementation among its members of the relevant international instruments.¹³³ Two RFMOs did not answer this question directly¹³⁴ and one RFMO indicated that it supported the implementation of the substance of the international agreements, although the organization itself had not implemented any of the identified international instruments.¹³⁵

Seven of the responding RFMOs indicated ways they cooperate with open registry States to work towards more effective flag State control.¹³⁶ Six organizations have taken measures in relation to open registry States. Examples of these cooperative measures include:

- the implementation of action plans;
- the passage of resolutions or the creation of committees to promote compliance;
- the implementation of programs to encourage effective flag State control; and
- communication with the open registry States to provide information and data on the relevant fishery.¹³⁷

Six RFMOs also regularly invite open registry States to participate in the RFMO.¹³⁸ Two RFMOs¹³⁹ indicated that cooperation with open registry States was not an issue.

Sanctions and enforcement against open registry fishing vessels

The RFMOs were asked to provide information on sanctions and enforcement where effective flag State control is not exercised. The questions appear below.

- a) Has the organization adopted any policies, resolutions or sanctions in respect of open registry fishing vessels where there is no effective flag State control?

¹³² CCAMLR, CCSBT, IBSC, ICCAT, IATTC, IOTC, NAFO, NASCO, NPAFC.

¹³³ CCAMLR, FFA, ICCAT, IOTC, NAFO, NASCO, NPAFC.

¹³⁴ IATTC and IBSC.

¹³⁵ CCSBT notes that although it has not yet formally adopted any of the relevant instruments, there is broad consistency between the Code of Conduct, the UN Fish Stocks Agreement and the CCSBT Convention.

¹³⁶ CCAMLR, CCSBT, FFA, ICCAT, IOTC, NAFO, NASCO.

¹³⁷ CCAMLR, ICCAT, IOTC, and NASCO have adopted resolutions; CCSBT has adopted a Tuna Statistical Document Programme (CCSBT TIS) and the CCSBT Action Plan. IOTC has also adopted a certificate programme for bigeye tuna traded internationally. NAFO has legal provisions and Conservation and Enforcement Measures as well as "the Scheme to Promote Compliance by non-Contracting Party Vessels with the Conservation and Enforcement Measures Established by NAFO" 1997.

¹³⁸ CCAMLR, CCSBT, FFA, ICCAT, IOTC, NAFO. All coastal States within the NASCO Convention Area with Atlantic salmon interests are Parties to NASCO except St. Pierre and Miquelon. The issue of whether or not to invite France (in respect of St. Pierre and Miquelon) to become a Contracting Party to NASCO is under consideration (CNL(01)68).

¹³⁹ NASCO and NPAFC.

- b) Does the organization have any information on enforcement measures that have been taken in relation to offences committed by open registry fishing vessels?

Five organizations identified sanction measures they had implemented against open registry States not exercising effective flag State control.¹⁴⁰ Sanctions included trade related measures¹⁴¹ and diplomatic actions.¹⁴² The trade-related actions implemented by CCAMLR, CCSBT and ICCAT have had significant positive impacts in securing compliance with respective Convention conservation and management measures. These are briefly reviewed below.

In 1999 CCAMLR introduced an innovative catch certification system¹⁴³ to address the increasingly serious illegal fishing of Patagonian toothfish.¹⁴⁴ The system "traces" the Patagonian toothfish from the moment it is caught until it is bought by the consumer. This compulsory labeling is monitored and validated at every step of the process. If it is not in conformity, the RFMO Member States are required to reject the product.

Data provided to CCSBT indicated that up to 1999 there had been significant and increasing volumes of southern bluefin tuna (SBT) (up to 15% of the catch) being taken by open registry vessels. To deter this IUU fishing, the CCSBT implemented a Trade Information Scheme (TIS)¹⁴⁵ which denies access to markets for SBT.

The TIS provides that all members of the CCSBT maintain requirements for all imports of SBT to be accompanied by a completed CCSBT Statistical Document.¹⁴⁶ Shipments not accompanied by this form must be denied entry by the member country. All exports of SBT from countries and entities without responsibilities as flag State into member countries of CCSBT are basically refused by the import country. Considering that Japan is a Member State and is effectively the only importing country in the world, this is a very effective management system for SBT. The volume of trade from the countries identified by the CCSBT has declined significantly since the introduction of the TIS.

ICCAT has taken non-discriminatory and non-restrictive trade measures against non-Contracting¹⁴⁷ and Contracting Parties.¹⁴⁸ In 1993 and 1994 ICCAT established a Bluefin Tuna Statistical Document (BTSD) Programme which requires that all bluefin tuna imported into a Contracting Party must be accompanied by a BTSD, validated by an authorised government official.¹⁴⁹ ICCAT has been able to compile considerable information on unreported catches through this programme.¹⁵⁰

These measures and other associated measures¹⁵¹ (detailed in FAO Circular 980) have had considerable impact. The BTSD identified all bluefin tuna caught illegally by flag. The trade measures resulted in many impacted States initiating measures to monitor and control the vessels registered to

¹⁴⁰ CCAMLR, CCSBT, ICCAT, NAFO, NASCO.

¹⁴¹ CCAMLR, CCSBT, ICCAT.

¹⁴² NAFO, NASCO and ICCAT details are in FAO Circular 980.

¹⁴³ Conservation Measure 170/XX Catch Documentation Scheme for *Dissostichus spp.*

¹⁴⁴ The problem is exclusively associated with longliners of which there have been over 130 sightings since 1997. Non-Contracting Parties whose vessels have been sighted and/or reported fishing in the Convention Area include: Belize, Bolivia, Honduras, Panama, Sao Tome and Principe, Seychelles, St. Vincent and the Grenadines, Vanuatu, Togo.

¹⁴⁵ June 2000.

¹⁴⁶ The document must be endorsed by an authorized competent authority in the exporting country and include extensive details of the shipment, including name of fishing vessel, gear type, area of catch, and dates of catch.

¹⁴⁷ As of 1999, prohibitions of imports of products of the pertinent species from Belize, Honduras and Panama. The sanctions were lifted against Panama when Panama demonstrated it had taken appropriate effective measures.

¹⁴⁸ As of 1999, actions have been taken against Equatorial Guinea.

¹⁴⁹ The signature and seal of this government official must have been previously registered with ICCAT.

¹⁵⁰ Case Study: How ICCAT is Combating IUU Fishing Activities, by Peter Miyake, PhD, ICCAT Assistant Executive Secretary, reproduced in European Parliament Committee on Fisheries Working Document 2 on the role of flags of convenience in the fisheries sector, 11 April 2001; rapporteur Patricia McKenna.

¹⁵¹ Other measures associated with BTSD are described in FAO Circular 980.

them. For example, Panama has cancelled all the licences of fishing vessels for tuna and new licences are only granted to those that obtain an international fishing licence from Panamanian authorities. The Panamanian Government has also prohibited the catch of bluefin tuna.

These ICCAT measures have also resulted in increased membership in ICCAT and investigation by flag States whose vessels appeared in ICCAT's IUU list.

Three organizations provided information on enforcement measures taken against vessels which had committed offences.¹⁵²

Summary

IUU fishing activities by open registry vessels undermine the conservation and management measures of many RFMOs. Effective flag State control would significantly improve the situation. To this end, RFMOs have taken a number of actions over the past decade to address the problems posed by flag of convenience vessels and IUU fishing. They are well positioned to do this both as a Secretariat and through its members.

Key pressures imposed by RFMOs which activated flag State control include trade-related measures,¹⁵³ deregistration¹⁵⁴ and the imposition of fines.¹⁵⁵ These have successfully persuaded States to become members of RFMOs or comply with conservation measures.¹⁵⁶ The trend of increasing cooperation among RFMOs is particularly effective in the campaign to prevent and deter the undermining of conservation and management measures.¹⁵⁷

Enforcement measures

Recipients of both questionnaires – open registry States and RFMOs – were asked to provide information on enforcement measures taken in respect of offences committed by open register fishing vessels during the period 1995-2001. All responding open registry States and three RFMOs provided the information described below.

Open registry States

A summary of offences for Belize, Cook Islands and Vanuatu is provided in FAO Circular 980. It shows seventeen offences by Belize vessels, one each by a vessel from the Cook Islands and three flying the Vanuatu flag. Unfortunately, in most cases information was not submitted on the type of fishing vessel involved. Most vessels were found guilty of violating fishing regulations or measures (and one for drug trafficking), in various locations. Fifteen of Belize's vessels and all three of Vanuatu's were deregistered.

Significantly, where fines were imposed, they ranged from US\$10 000 to US\$30 000, which may be relatively modest in relation to the value of the resource fished.

Malta reported that during 1995-2001 there were no reports of offences in respect of Maltese fishing vessels.

¹⁵² CCAMLR, ICCAT, NAFC. Further information can be found in FAO Circular N° 980.

¹⁵³ e.g. the imposition of trade certificate programs by CCAMLR and CCSBT have pressured open registry States to exercise effective flag State control and comply with the conservation and management measures of the relevant Convention.

¹⁵⁴ e.g. deregistration of vessels in response to ICCAT pressure.

¹⁵⁵ e.g. the imposition of fines by Panama against Panama-flagged vessels and the eventual withdrawal of these vessels from Panama's register.

¹⁵⁶ e.g. as a result of ICCAT measures, Panama joined ICCAT. CCAMLR and CCSBT expressed similar positive results.

¹⁵⁷ e.g. the certificate programmes adopted by CCSBT and IOTC have resulted in the exchange of information which assists in improving management of relevant fisheries. Also, the many resolutions passed by CCAMLR, IOTC, ICCAT and NASCO, the Action Plan adopted by CCSBT, and Conservation and Enforcement Measures adopted by NAFO encourage cooperation among States to better conserve and manage the relevant fisheries through information sharing and effective flag State control.

Regional Fishery Management Organizations

CCAMLR

The enforcement measures taken by CCAMLR in relation to offences committed by open register vessels are detailed in FAO Circular 980. Belize deregistered four vessels that engaged in IUU fishing, and issued a warning to one other.

CCAMLR issued several submissions to Panama on IUU fishing activities by its flag vessels, and Panama provided CCAMLR with a list of all its vessels licensed to fish on the high seas in the Southern Oceans. Panama advised that no licences had been issued for the CCAMLR Convention Area.

CCAMLR advised Vanuatu of sightings of Vanuatu-flagged vessels in the Convention Area in 1997 and 1998, and Vanuatu notified CCAMLR that vessels proved to have committed an offence will be considered for suspension or deletion from its registry.

NPAFC

NPAFC reported illegal fishing by a Honduran flagged vessel in 2000. The vessel was seized by the US Coast Guard with the Honduran Government's cooperation and forfeited under the U.S. District Court decree. The crew was repatriated and the vessel was ordered to be sold at a public auction.

FFA

Information on reported violations of fisheries legislation held in the FFA Violations and Prosecutions (VAP) database provides an indication of the level and type of violations that have occurred over the past 20 years in the EEZs of member countries.¹⁵⁸ It also indicates the relative success of the combination of legal and technical elements of fishing vessel administration and monitoring in creating a strong compliance environment in the Western and Central Pacific Ocean region.

While the number of reported violations has fluctuated with the rise and fall of fishing activity in recent years, it appears that the compliance environment that has been created in the region has had a positive effect in reducing the illegal activities of fishing vessels in the waters of FFA member States. Throughout this period, it also appears that the background level of IUU fishing, while low, has been relatively constant.¹⁵⁹

The number of recorded violations for the period 1978-2001 is dominated by Taiwanese vessels (40 per cent), particularly longliners. Japanese longliners (14%) and Korean (9%) and Taiwanese (8.5%) purse seiners also figure prominently. FOC vessels (Belize, Panama, Honduras) do not contribute significantly to the total number of violations.¹⁶⁰

However, the percentage rate of violations (number of violations by flag compared with the size of each fleet active in the region) shows that some of the smaller fleets, such as Belize, have a higher percentage violation rate than the larger fleets of Japan and China. For example, in 1995, 30%

¹⁵⁸ Reported Fisheries Violations in the EEZs of FFA Member Countries, 1978 – 2001: An Analysis of the Violations and Prosecutions Database, FFA Report No. 01/18.

¹⁵⁹ An analysis of the VAP database is provided in FAO Circular 980.

¹⁶⁰ Reported Fisheries Violations in the EEZs of FFA Member Countries, 1978-2001: An Analysis of the Violations and Prosecutions Database, FFA Report No. 01/18.

of Belize's fleet and 20% of Vanuatu's fleet were involved in violations compared to 3.8% of Korea's and 1.8% of China's fleets.

A summary of violations by flag and type of violation¹⁶¹ indicates that illegal fishing accounts for 64% of the recorded violations, while non-compliance with licences accounts for 25%. Breach of national law and international law account for 9% and 0.6% respectively.

At least USD12.4 million has been received during the period 1978-2001 in fines by FFA members.¹⁶² Approximately 7.5% of these fines were paid by vessels operating under the open registries of Belize, Honduras, Marshall Islands and Panama.

Summary

Of the 20 offences described by open registry States, 16 resulted in deregistration of the offending vessel(s), five resulted in fines up to US\$50,000, four resulted in fines and deregistration, and two had no follow-up action. RFMOs reported that open registry States took similar actions (i.e. deregistration and payment of fines) for violations in the relevant Convention Areas. In the FFA region, a higher proportion of fleets registered in open registry States were cited for violations compared to other fishing fleets.

CONCLUSION

The United Nations Open-Ended Consultative Process on developments in ocean affairs concluded in its April 2002 discussion on IUU fishing that:¹⁶³

Despite a decade of progress in establishing instruments and programmes related to oceans, the international community continues to confront urgent and serious challenges and sustainable fisheries is a further action for priority action, owing to the fact that approximately 75 per cent of the world's fisheries are either fully exploited or overexploited.

The progress in establishing instruments and programmes related to oceans in the post-UNCED era is considerable. These instruments have progressively agreed on a tighter weave relating to the duties and responsibilities of the flag State in respect of its fishing vessels. An important objective of these instruments in this regard, reinforced by recent jurisprudence of the ITLOS, is to secure more effective implementation of the duties of the flag State.

Considering the rising number of fishing vessels on open registries, and States that operate open registries, the real issue is whether the instruments available provide an adequate framework for flag State control, what are the consequences of open registry States that fail to exercise their duties and what more can be done to avoid unwanted consequences?

While the international instruments provide the legal mechanism to achieve effective flag State control, a central issue is whether their implementation by some States provides an impetus for vessels to operate under open registries; do the legal and practical realms converge, or are they separate?

In the legal realm, the adoption of international instruments by flag States in itself does not appear to be the primary motivating force behind the use of open registries by fishing fleets. In addition, in many cases the actions of open registry States do not appear to be directly related to adoption or implementation of international instruments, or participation in the work of RFMOs.

¹⁶¹ I.e. illegal fishing, breach of national law, licence non-compliance, breach of international law.

¹⁶² The fines range from US\$126 to US\$1 400 000.

¹⁶³ United Nations Open-Ended Consultative Process Established by the General Assembly in its Resolution 54/33 in order to Facilitate the Annual Review by the General Assembly of Developments in Ocean Affairs, Draft Report April, 2002, paragraph. 78.

A more likely rationale underlying the choice of registries – open, or not – is the implementation of the international instruments, including through trade sanctions and other measures adopted by RFMOs and their member States. It is clear that the international instruments provide a comprehensive foundation for the exercise of flag State responsibilities by the international community, including open registry States. They way ahead may depend on identifying how to encourage effective implementation of those responsibilities.

Ratification or adoption of the international instruments and implementation in national law would be an obvious first step. In addition, initiatives being taken by open registry States, RFMOs and non-flag States serve as useful precedent on a practical level. Some open registry States are requiring compliance by their vessels with the international instruments and international conservation and management measures. Their actions include:

- implementing requirements of international instruments in national legislation;
- establishing an application process which requires an authorization to fish;
- deregistration of vessels for non-compliance;
- implementation of fines or other sanctions for non-compliance; and
- membership or participation in RFMOs.

RFMOs are taking significant steps involving communications with non-member open registry States including to cooperate and participate in the organization. They are implementing strategies through their members to secure compliance with international conservation and management measures. Some successful strategies noted above involve port access, trade-related measures, fines and deregistration.

Action taken by non-flag States to discourage unregulated activities of open registry vessels can include:

- restricting the fishing companies registered within their jurisdiction from owning and operating open register fishing vessels;
- conducting rigorous inspections of open register vessels when landing their catch or resupplying; and
- imposing trade or other sanctions if they are the ultimate destination of fish caught by the open register fleets.

It is evident that the overriding benefits of open registries – and therefore the rationale for their establishment and use – are largely economic for the open registry States and the fishing vessel owners. However, as noted earlier, the economic benefits for the open registry States to include fishing vessels on their registries appears to be limited, while the incentive that some open registries provide for IUU fishing is great. This situation could provide an impetus for serious efforts to control the registries in respect of fishing vessels. Such efforts could be made by FAO-IMO collaboration, in accordance with the FAO IPOA-IUU,¹⁶⁴ and might include:

- further study on whether measures that have been used to improve the management of open registries for commercial shipping could be adapted to fishing vessels;

¹⁶⁴ Paragraph 90.

- additional measures that States should take to deter business between their insurers, bankers, service suppliers, etc. and vessels identified as engaged in IUU fishing, as provided in the FAO IPOA-IUU.¹⁶⁵
- consideration of extending to fishing vessels, for compliance purposes, an IMO initiative that would require a “continuous synopsis” record to be carried on board vessels for safety purposes - the record would show the complete history of the owners and flags of the vessel, but the issue of requiring such private sector information to be publicly available may arise.

In addition, guidelines for fishing vessel registration and compliance mechanisms could be developed by FAO under the Code of Conduct, in collaboration with IMO and other agencies. Relevant provisions of the 1986 Convention on the Registration of Ships could provide precedent for such guidelines, as well as successful policy, administrative and legal practice of States and RFMOs.

Collaboration could take into account the genuine link requirement (that States ensure that they can exercise their responsibilities effectively before registering a fishing vessel, and authorizing it to fish), and tools developed to date such as an effective information and data base, application process, fishing authorization process and cost-effective monitoring, control and surveillance strategies. Significant fines and other penalties such as deregistration could be reviewed.

The implementation of flag State responsibilities in the international instruments represents “work in progress”, including for open registry States in respect of their fishing fleets. Positive steps to elaborate and implement existing provisions could assist in meeting the urgent challenges in achieving sustainable fisheries.

¹⁶⁵ Paragraph 73.

KEY FLAG STATE RESPONSIBILITIES IN RECENT INTERNATIONAL INSTRUMENTS

Provision in five instruments	Instrument	Reference
Maintain a register or record of fishing vessels	UN FSA ¹⁶⁶ 1982 UN Convention Compliance Agreement Code of Conduct IPOA-IUU	18.3(c) 94.2(a) IV 8.2.1 42
Provisions in four instruments	Instrument	Reference
Ensure that vessels do not undermine effectiveness of conservation and management measures.	UN FSA Compliance Agreement Code of Conduct IPOA-IUU	18.1 III.1(a) 6.11 34, 48
Authorize vessels for fishing where it is able to exercise effective flag State control to ensure proper application of international instruments	UN FSA Compliance Agreement Code of Conduct IPOA-IUU	18.2 III.3 6.11 35, 44
Cooperation among States to ensure compliance with and enforcement of conservation and management measures.	UN FSA 1982 UN Convention Compliance Agreement Code of Conduct	20.1 118 V.1 6.12, 7.1.3
Provisions in three instruments	Instrument	Reference
Ensure that vessels comply with subregional and regional conservation and management measures.	UN FSA 1982 UN Convention Code of Conduct	18.1 117 6.10
Licensing or authorizations to fish required	UN FSA Code of Conduct IPOA-IUU	18.3(a) 8.1.1, 8.2.2 45
Marking fishing vessels and fishing gear ¹⁶⁷	UN FSA Compliance Agreement Code of Conduct	18.3(d) III.6 8.2.3, 8.2.4
Recoding and reporting of fisheries data	UN FSA Compliance Agreement Code of Conduct	18.3(e) III.7 6.11, 8.1.3
Enforcement measure to include sanctions of sufficient severity to secure compliance and discourage violations, deprive offenders of benefits accruing from illegal activities and may permit refusal, withdrawal or suspension of fishing authorizations if appropriate.	UN FSA Compliance Agreement Code of Conduct	19.2 III.8 8.2.7
Establish effective mechanisms for monitoring, surveillance, control and enforcement to ensure compliance with conservation and management measures	UN FSA Code of Conduct IPOA-IUU	18.3(g) 7.1.7 7.7.3 8.1.4 51
Provisions in two instruments	Instrument	Reference
Restrictions on reflagging vessels	Compliance Agreement IPOA-IUU	III.5 36, 38, 39
Adopt laws, regulations or policies re fisheries management on high seas or in zones of other States	UN FSA Code of Conduct	18.3(b) 6.13, 7.7.1

¹⁶⁶ United Nations Fish Stocks Agreement.¹⁶⁷ Fishing gear does not appear in the Compliance Agreement.

APPENDIX F.2

OPEN REGISTRY STATES THAT INCLUDE FISHING VESSELS ON REGISTER

Following are 32 States operating open registries that include or have included fishing vessels, as sourced in March, 2002.

Antigua and Barbuda*
 Bahamas
 Barbados*
 Belize
 Bermuda*
 Cambodia
 Cayman Islands
 China, Hong Kong, SAR*
 Cook Islands
 Cyprus
 Equatorial Guinea
 Gibraltar
 Honduras
 China, Hong Kong, SAR
 Isle of Man**
 Kerguelen
 Liberia*
 Malta
 Marshall Islands
 Mauritania
 Mauritius
 Morocco
 Netherlands Antilles
 Panama
 Samoa
 Sao Tome and Principe
 Seychelles
 Sierra Leone
 Singapore*
 Saint Vincent and the Grenadines
 Tonga
 Tuvalu
 Vanuatu

* These States responded to the questionnaire that they do not currently register fishing vessels, but fishing vessels registered as of December 31, 2001 were reported in Lloyd's Register Fairplay – World Fleet Statistics 2001.

** The Isle of Man only includes small local vessels fishing in Manx territorial waters and owned and operated by Manx fishers.

GUIDELINES FOR THE CASE STUDIES

Purpose

Three countries have been selected as case studies for the Consultation. These countries are Cook Islands, Cyprus and Panama.¹

The purpose of the case studies is to:

- Highlight policies, legislation and methodologies employed in the three countries with respect to the registration of vessels, in particular fishing vessels;
- Explain what measures countries have in place, following registration, to meet flag State responsibilities and thus effectively exercise jurisdiction and control in administrative, technical and social matters over ships flying their respective flags;
- Discuss the problems that countries face in dealing with non-compliant flag vessels, and
- Outline the measures/sanctions imposed on vessels that infringe the terms of registrations and fishing authorizations.

Structure of the case studies

It would be most helpful if the three case studies are structured under the following headings.

Title

Abstract

There should be a short abstract (maximum 250 words) which provides a summary of the case study.

Introduction

Policy

This section should address the following questions:

- What is the general policy of the case study country for granting of nationality to vessels, for registration of vessels in its territory and for the right to fly its flag? Is there a specific policy concerning the registration of fishing vessels?
- How is policy on the registration of fishing vessels determined (e.g. which agencies of government participate in determining policy)?
- What is/are the goal/s of policy? Is it primarily one of revenue raising?
- Are domestically owned fishing vessels subject to different treatment than foreign owned fishing vessels?
- Are fishing vessels subject to different registration systems depending on whether they are operating in TW, EEZ or on the high seas?
- Are fisheries considerations and flag State responsibilities taken into account in determining policy?
- Are there periodic policy reviews?

¹ Countries have been selected taking into account geography, the number of fishing vessels registered and policies towards meeting international flag State responsibilities.

Registration

This section should focus on the following issues:

- Location of the register and when it was established.
- Agency (e.g. an authority, ministry, private company etc) responsible for the operation of the registry.
- Linkages between the registry administrator and ministries of government (e.g. Fisheries Ministry, Finance Ministry, Ministry of Foreign Affairs etc.); if consultations/collaboration takes place, with what frequency and at what level?
- Description of fees, levies and taxation in case of registration.
- Amount of revenue generated by the operation of the registry and the proportion accruing from fishing vessels?
- Number and details of fishing vessels registered.
- Advantages gained by fishing vessels in entering the registry.
- List of relevant laws and regulations governing registration of vessels in general and summary of specific legislation governing fishing vessels, with attached copies or excerpts of such laws and regulations (as annexes).

Procedure for the registration of fishing vessels

This section should deal with the following points:

- What is the definition of 'fishing vessel'? Are support vessels included in the definition?
- How can applications for registration be made (e.g. by letter, e-mail, fax etc.)?
- Steps a vessel owner must take in order to apply for registration (conditions to be met, documentation and technical certificates to required, other information to that must be provided).
- Is there a different procedure for registration of vessels, i.e. inscription on a register and granting of the flag, and for entering fishing vessels in a specific record of fishing vessels?
- Are there any fishing-related criteria for registration, such as fishing licences, authorizations, etc.?
- What investigations are undertaken to assess whether the vessel should be registered? In particular, are any checks made to determine whether a fishing vessel has been operating in an unauthorized manner or is on a so-called 'black list' of fishing vessels, or to determine a vessel's flag history or de-registration from other records?
- How long does it normally take to obtain registration?
- What are the conditions and causes (e.g. punitive measures) for de-registration, deletion from the records, loss of nationality?
- Is there a procedure for provisional registration? Duration? Conditions? When is it likely to be confirmed?
- Sample copies of registration form and flag documents that are issued (as annexes).

Exercise of flag State control over fishing vessels

- Are there any discernable trends in the ownership, type of vessel or fishing activities of the fishing vessels seeking registration?
- Are there criteria for the type of fishing vessel to be registered?
- Are there any circumstances under which a fishing vessel will not be granted a registration?
- Are there any restrictions on the operation of the vessel, once registered, such as area requirements, reporting routines, etc.?

- Is there any communication with/participation in coastal States arrangements or regional fishery bodies that have jurisdiction or a mandate over the area where vessels have fished/may be fishing?
- Summary of any laws and regulations relating to the exercise of flag State control over fishing vessels, with attached list (as annexes).
- If so, are there any MCS or enforcement activities?
- Accountability of vessel owners, operators, or representatives of fishing vessels?
- Description of initiatives that have been or can be taken by Government in case of non-compliant flag vessels, non compliance with technical measures, social measures, fisheries management measures?

Fishing authorizations

- control on type of fisheries and scale of fishing vessels for which registration is requested?
- Are any checks made to determine whether a fishing vessel seeking registration has an authorization by a coastal State or a regional fishery body to fish in the area where it intends to operate?
- specific sanctions imposed on fishing vessels that infringe the terms of registration and fishing authorizations.

Format and presentation

Case studies should be prepared in Word format and be provided to the Secretary of the Consultation electronically.

Each case study author will be invited to make a presentation of his/her study during the Expert Consultation. It is proposed that, in addition to a prepared paper to be distributed electronically to Experts prior to the Consultation, authors also prepare a PowerPoint presentation to facilitate delivery during the Consultation.

Length

The case study should be concise and not exceed 20 pages in length, excluding annex material (lists and summaries of laws and regulations, sample registration forms, etc.).

Submission

Each author is requested to provide his/her case study to the Secretariat of the Expert Consultation by **30 August 2003** at the latest. As soon as the studies are received they will be placed on the Expert Consultation website.

Consultation Secretariat/Contact persons

For further information please see <http://www.fao.org/fi/meetings/> or contact:

David Doullman Senior Fishery Liaison Officer Fisheries Department FAO Viale delle Terme di Caracalla, 00100 Rome, Italy Phone: +39 - 0657056752 Fax: +39 - 0657056500 Email: david.doullman@fao.org	Eric Reynolds FishCode Programme Coordinator Fisheries Department FAO Viale delle Terme di Caracalla, 00100 Rome, Italy Phone: +39 - 0657056807 Fax: +39 - 0657056500 Email: eric.reynolds@fao.org
--	--

THE COOK ISLANDS – A CASE STUDY

J. Mitchell¹ and G. Broadhead²

ABSTRACT

This case study aims to highlight particular policies, legislation and methodologies employed within the Cook Islands with respect to the registration of vessels, and in particular fishing vessels. The study will also seek to explain the measures the Cook Islands has in place, following registration, to meet its flag State responsibilities and thus effectively exercise jurisdiction and control in administrative, technical and social matters over ships flying its flag. In addition, the study reviews the problems that countries, such as the Cook Islands, face in dealing with non-compliant flag vessels, and outlining the measures or sanctions imposed on vessels that infringe the terms of the registration and relevant fishing authorization.

INTRODUCTION

The Cook Islands consist of 15 islands scattered over some two million square kilometres of the Pacific Ocean. They lie in the centre of the Polynesian Triangle, flanked to the west by the Kingdom of Tonga and the Samoas and to the east by Tahiti and the islands of French Polynesia. The capital island of Rarotonga, lies directly south of Hawaii and is the same distance south of the equator as Hawaii is north. The Cook Islands is just to the east of the International Date Line and is ten hours behind Greenwich Mean Time.

The islands are thought to have become inhabited sometime between 500 and 800 AD by people from other islands in Polynesia. The Spanish explorers Alvaro de Mendana and Pedro Fernandez de Quirós were the first Europeans to sight islands in the group, in 1595. There is no further record of European contact for 150 years, until Captain James Cook explored the group in his expeditions of 1773 and 1777. Remarkably, Cook never sighted the largest island, Rarotonga. That honour was left to the mutineers on HMS *Bounty*, who landed on Rarotonga in 1789, during their escape to Pitcairn. Cook named the group the Hervey Islands, after a British Lord of the Admiralty, but they were renamed Cook Islands, in honour of the great explorer, some 50 years later by the Russian cartographer, Admiral John von Krusenstern.

The British did not take control of the Cook Islands until 1888 and in 1901 they were annexed by New Zealand. In 1965 the New Zealand Parliament passed the Cook Islands Constitution Act and gave the Cook Islands self-government founded upon its own written constitution. Today the Cook Islands have a Westminster Parliamentary system with democratic elections every five years. The Head of State is Her Majesty Queen Elizabeth II by Her representative in the Cook Islands.

The legal system of the Cook Islands closely reflects that of New Zealand and most other English Common Law jurisdictions. There is a High Court and a Court of Appeal of the Cook Islands, which is presided over predominantly by current or former New Zealand High Court Judges. The ultimate appellate court is the Privy Council in London.

BACKGROUND

Distant water fishing nations (DWFNs) have conducted fishing operations in the Cook Islands EEZ, or an area approximating this, in past years (1960-1994). These fleets have included Japanese,

¹ Director of Policy and Resource Management, Ministry of Marine Resources, Cook Islands.

² Maritime Cook Islands Ltd.

Korean and Taiwanese longline vessels targeting predominantly albacore, and frozen sashimi tunas. More recently, several local or locally based longline vessels were licensed from the period 1994 to mid 1997. The vessels ranged from 16 to 35 metres in length and 30 to 180 GRT, and fished on a year round basis. These vessels targeted export quality fish for the fresh chilled and sashimi markets overseas.

In 1998, there were several bilateral arrangements concluded with foreign companies based overseas. Catch from these vessels, operating mainly in the northern part of the EEZ were very high, particularly of albacore, which was unloaded at the cannery in Pago Pago. During 1999 – 2000, catch rates were lower than 1998, and appeared to be adversely affected by a strong *la niña* weather pattern.

CURRENT SITUATION

In May 2000, the Cook Islands Government appointed an Administrator for the Cook Islands Ships Registry – Maritime Cook Islands Limited (MCI), a private company registered in the Cook Islands.

The initial tasks facing MCI included encouraging the Cook Islands Government to accede to various important maritime conventions and to join IMO itself. These aspects are now well advanced.

The licensing of foreign fishing vessels was discontinued in 2001, as part of a government strategy to encourage local investment into the sector. The development of the Cook Islands fishing industry has since been a major focus of Government, as evidenced by Budget Statements and other public pronouncements. Government's main emphasis has been on development of the industry within the EEZ. MCI recognized that there was a wider opportunity for the Cook Islands in allowing the registration of High Seas Fishing Vessels and leveraging off the competences learned by MCI and the Ministry of Marine Resources (MMR) in managing the local fishing vessels.

Under the United Nations Convention on the Law of the Sea 1982 (UNCLOS), the Cook Islands have an Exclusive Economic Zone (EEZ) of approximately 1.8 million square kilometres. Several marine species are currently commercially exploited within the EEZ. These include the culture of giant clams and black-lip pearl oysters; a purse seine fishery, regulated in part by the Inter-American Tropical Tuna Commission; an artisanal FAD fishery; a trochus fishery; and more recently a tuna longline fishery.

Over the past two years, there has been considerable development of the domestic tuna longline fishery and a corresponding increase in the number of licenses granted to locally based fishing vessels, from 5 in the first year to 37 at present. There has also been considerable interest from DWFNs in establishing fishing operations in the Cook Islands EEZ. This interest has influenced further investment in the industry.

A Maritime Training School has been established with the assistance of New Zealand to ensure the availability of certified crew aboard locally operated vessels.

Government supports the development of the Cook Islands fisheries industry in both the EEZ and upon the high seas. In relation to both these areas Government has stressed as part of its policy the imperative of compliance with management and protectionist measures for fish stocks in the interests of sustainable exploitation.

POLICY

The Cook Islands Government is leading the way in the Pacific and internationally, with the regulation of its High Seas vessels through the issuing of High Seas authorisations and through entering into permitting agreements with Cook Islands-flagged, High Seas vessels. This is an integral part of the Cook Islands goal of becoming a strong regional player in the Pacific and possibly an influential High Seas Fishing Nation, in respect of other Regional Fisheries Organisations.

This new emphasis has required the broadening of legislative and regulatory structure currently in place and a change in focus from purely a coastal state, protecting its resources from illegal foreign fishing and developing its local industry, to recognising and facilitating the legitimate interests of the Cook Islands Industry in operating beyond its EEZ. In addition, it is necessary to ensure that the interests of other countries are respected and international goals for the conservation of High Seas resources are enshrined and enforced in the new legislative environment.

The prescription of policy for the registration of vessels is derived from several sources:

- official Government Policy is revealed in documents such as the recent Budget Statement which promotes;
- "safe and efficient maritime regulatory policies consistent with international standards".

However, specific reference to shipping falls under a wider umbrella of Government Policy that seeks to broaden the economy of the Cook Islands. This is in particular reference to the development of a Cook Islands Fishing Industry and its offshoots which bring together many of the aspects of a wider shipping policy.

On a "nuts and bolts" level, policy is directed by three bodies: The Ministry of Transport (MoT), Maritime Cook Islands Limited (MCI) (the corporate administrators of the Cook Islands Ship Registry) and, additionally in the case of Fishing Vessels, The Ministry of Marine Resources (MMR).

Policy, at a practical level, finds its expression in the Shipping Act 1998 (as amended) which has as its preamble the following:

"An act to consolidate and amend the law relating to Shipping and Seafarers and to control the registration, safety and manning of ships, and to give effect to various international maritime conventions, and for the purposes connected therewith."

Part 3 of the Act was recently amended and lays out the legal parameters governing the registration of vessels (both convention and non convention vessels). In line with government policy to contract out non-core activities, the registration of vessels was contracted out to MCI by an agreement signed in May 2000, which defines the parameters for the administration of the Registry by a private company. A particular tenet of the agreement is that MCI should do nothing that may risk bringing the Government of the Cook Islands into disrepute and any such action can be sanctioned by cancellation of the contract.

MCI's policy is set out in (in part) in the Registration Requirements and is circumscribed by two over-riding principles.

The first principle is control; MCI sees the ability to exercise direct control over the fleet as a key factor in discharging responsibilities to government and thereby the Cook Islands' flag state responsibilities. Control is multi faceted and is exercised through a variety of mechanisms. Examples of this are:

- all Flag State documentation is generated in Rarotonga;
- a thorough due diligence is conducted on all owners who apply for registration and the effect of this, to date, is that far more vessels are rejected than are accepted onto the Register; and
- any vessel inspection is conducted by an independent Cook Islands surveyor, with whom MCI has a contract.

The direct involvement by MCI in all aspects of vessel registration, crew certification, safety issues, in the discharge of its flag state duties brings confidence to both owners and Port State Controllers that the Registry is aware of and complicit with all actions taken in its name and under the Cook Islands Flag.

The second is positioning. MCI seeks to "position" the Cook Islands flag at the upper end of the registration market. MCI seeks to attract quality owners that take their own responsibilities seriously and are looking for a high quality, customer-oriented service, from a Registry that does not compromise safety. It is considered that finding such owners makes the primary goal of "control" far easier to achieve.

A specific policy is in place for the registration of Fishing Vessels and this is jointly administered by MCI and MMR. The registration of any Fishing Vessel is dependent on its ability to get a fishing authorisation from MMR and subsequent to registration the two agencies work together to enforce their separate requirements. One of the key features of policy in relation to fishing within the Cook Islands EEZ has been to require that all vessels licensed to fish be also registered on the Cook Islands register, either normally, or under a demise charter. This has been a very effective policy: It has deterred undesirables from seeking local licences and has seen the establishment of one of the newest and highest quality local fishing fleets in the Pacific Islands.

The future development of the Cook Islands as a High Seas Fishing Nation will require the Government to become involved in an ever-wider range of Regional Fisheries Organizations and the conventions that govern them, in order to cater for the needs of Cook Islands flagged, High Seas Fishing Vessels. This is something that the Government, in conjunction with its agencies is prepared to do. As the pressure on High Seas fish stocks continues to rise it is inevitable that the high seas and the fish species therein will come under some form of management. Thus the Cook Islands, is seeking to establish a responsible pattern of High Seas fishing, and to become recognized as a responsible Flag State. Any future rights of access to areas under management will to some extent be dependant on nations being able to demonstrate that they have taken their Flag State and international responsibilities seriously. These responsibilities include controls over where and how each vessel fishes (through VMS and other MCS mechanisms) and through active involvement in the individual Regional Fisheries Organizations.

High Seas fishing by Cook Islands flagged vessels is occurring simultaneously with the continuing development of the domestic fishery and they are expected to complement one another.

The ongoing development of the administration and operation of the Registry, complements the efforts of the Ministry of Marine Resources by assisting the Ministry in extending the legislative regime to encompass compliance by Cook Islands flagged fishing vessels with national laws, together with regional and international requirements when engaged in high seas fishing.

The policies as described above give rise to the following benefits:

- a) Cook Islanders will benefit from the creation of employment within the fisheries sector. This will happen both in the context of shore based operations and through involvement on the vessels engaged within the EEZ and on the high seas. The regulatory and enforcement functions that would need to be conducted by the Cook Islands Government in respect of these vessels will also give rise to increased employment opportunities.
- b) An export orientated fisheries sector would contribute significantly to economic output and growth of the Cook Islands economy both directly and indirectly through generated expenditure. In a relatively closed and isolated economy such as the Cook Islands, the indirect impacts would be significant.
- c) The introduction of this new industry will help develop and diversify the economy. This is particularly important for small island nations such as the Cook Islands, which currently

relies heavily on tourism and financial services. There will be an increased need for corporate services, local tax and accountancy services, vessel management and crew services and other satellite industries.

- d) The involvement of the Cook Islands in various Regional Fisheries Organizations and marketing of Cook Islands product into the EU and other countries will enhance the Cook Islands international profile. That international profile is further enhanced by its emergence as a high quality competent and responsible flag state.
- e) Enhancement of the Cook Islands ability to meet its obligations under and take advantage of the opportunities created by the Cotonou Agreement.
- f) The resulting investment in the fisheries industry will have regional and international impact, through Cook Islands participation in regional and international fisheries organizations.

Benefits are already being felt directly in the Cook Islands. The recent development of a fresh fish-processing factory in Rarotonga, purported to be among the best in the South Pacific, was made possible by major investment by a large fishing company that originally became involved in the Cooks through the registration of a High Seas Fishing Vessel and has subsequently become interested and involved in the domestic market.

REGISTRATION

Vessel owners currently have a wide choice of registries to choose from. Vessel owners have regard to, *inter alia*, the following matters when making a choice of flag for their vessels (in no particular order of preference):

- The nature of the maritime administration. This includes the extent of its responsibilities and its efficiency. The distance between the geographic location and the true ownership of the Register is considered.
- The level of registration fees and ongoing fees such as tonnage taxes.
- Limitations on vessels accepted for registration, such as those relating to size, tonnage and age of acceptable vessels.
- Port State Control (PSC) detention rates, casualty statistics and pollution figures.
- Provisions made for seafarers' safety and welfare.
- Crewing provisions, including the national law relating to crew, in particular the respective bargaining power of crew members employed aboard vessels and what the inherent rights are of crew in terms of national legislation. Restrictions placed on crewing, and certification requirements are also important. Given that crew costs account for more than 50% of the costs of operating vessels, this is a major consideration.
- The flag nation's company law is an important consideration. In particular, a ship owner is interested in determining how far a ship owner can legitimately place themselves at arms length from their interests in their vessels. Further, the ability to limit liability and the confidentiality of the underlying company register is important. This has relevance to the prevention of arrests of sister ships.
- The flag state's company tax structures must be efficient, so that earnings are tax exempt in the flag state and can be kept offshore.
- The nature of the governance in the maritime state is important. This refers to the level of political/economic risk, levels of corruption and the Government's views, for example, on nationalisation.
- The extent to which the flag state complies with and enforces the various international instruments emanating from the IMO, ITF, ILO and others.

Maritime Cook Islands Limited (MCI) has contracted with the Cook Islands Government to provide all services that are *"reasonably required for the administration, operation and promotion of the Cook Islands Register and Registry."*

Part III of the Shipping Act, provides for the appointment of a Registrar of Vessels and outlines the Registrar's duties. The Registrar may delegate all or any of the Registrar's powers and functions to another person, other than the specific power of delegation. The powers of the Registrar of Vessels are set out in the Act and its attendant regulations, specifically the Shipping (Registration) Regulations 2001. The Registrar's powers have effectively been delegated to MCI pursuant to the contract.

The Register is located in Rarotonga. It employs 4 permanent staff to administer approximately 50 vessels. Additional administrative support and assistance in the performance of certain functions is provided by MoT.

In line with the wider Government Policy the degree of interaction between the Registry and other Government Agencies, primarily MoT, MMR and Foreign Affairs, is high. At an informal level there is daily contact particularly with MoT and MMR and more formal meetings take place, on average, every month.

There are currently 59 vessels registered on the Cook Islands Register. 45 of these are fishing vessels; 33 of which are local vessels and 10 High Seas (2 laid up). The balance of the register is made up of several local cargo vessels, private yachts, 3 small external cargo vessels, 2 sail training vessels and the EEZ patrol vessel.

In the long term it is estimated that the High Seas Register has a maximum potential capacity of 150-200 vessels, being those that we are interested to Register.

Some of the benefits of registration of Fishing Vessels in the Cook Islands are summarized as follows:

- Efficient and flexible maritime registration requirements.
- Compliant with FAO instruments (Code of Conduct etc).
- Modern legislative and regulatory regime for fisheries (both EEZ and High Seas).
- The ability to effectively represent the requirements of owners.
- Official participation in Regional Fisheries Organisations to ensure that the rights of Cook Islands flagged vessels are protected.
- Selective registration procedures to ensure that the reputation of both the Cook Islands and those vessels fishing under our flag are protected by the exclusion of irresponsible, poorly managed vessels.

Procedure for the registration of fishing vessels

The Registration Requirements has a full description of the requirements, which can be summarized as follows:

- Application can be received by mail, fax or e-mail, but originals must be received before full registration can occur.
- Registrations are all recorded on the same Register.
- Fishing Related criteria, as required by MMR, are viewed as co-requisites for registration.
- Various checks are made to verify the history of any Fishing Vessel applying for registration and also the history of its owners. The resources used include but are not

limited to: the Equasis website, ITF website, FFA Regional Register, other Regional Organisations (e.g. CCAMLR and ICCAT) & private recommendations.

- In cases where incorrect information has been deliberately provided the Shipping Act 1998 provides for various sanctions, including criminal prosecution. The Registrar is empowered with the discretion to vary or revoke any documents issued by the Cook Islands in relation to the registration as he sees fit (Shipping Act 1998, Section 43).
- Provisional Registration is provided for in the Act (Section 19). In practice this is only granted in situations where the vessel is unable, for genuine reasons, to comply with the full registration requirements in the first instance. Three months are allowed for requirements to be met and vessels are financially sanctioned should they fail to meet this time limit.

Fishing-related criteria for registration

A fishing license is required under the Marine Resources Act 1989 for any vessel fishing vessel over 10 metres in length fishing within the Cook Islands EEZ. Registration of the vessel is required before a fishing license is issued.

In addition, the vessel, if fishing within Cook Islands waters, or elsewhere in the region is required to register with the Forum Fisheries Agency (FFA) on the FFA Regional Register.

Vessels fishing on the high seas are not currently expressly considered in the legislation. However, fishing in these areas is permitted through individual fishing agreements between Government and the individual vessel owners. These agreements cover all the terms and conditions of fishing on the high seas by any Cook Islands flagged vessels.

Under the Marine Resources Act 1989, a fishing vessel is defined as: "...any vessel, boat, ship or other craft which is used for, equipped to be used for or of a type that is normally used for fishing or related activities."

The definition of fishing is fairly broad, and includes any operation at sea in support of or in preparation for any fishing activity.

EXERCISE OF FLAG STATE CONTROL OVER FISHING VESSELS – REGISTRY

Fishing vessel safety

The primary responsibility of a Flag State is to govern the safety of the vessel, her crew and the environment and the lack of prescription for Fishing Vessels from many of the IMO conventions means that there is a huge amount of flexibility in the standards that Flag States can choose to apply. This has resulted in a number of flags giving carte blanche to Fishing Vessels to, more or less, do what they please. This has further resulted in a number of owners operating sub-standard and dangerous vessels the effect of which has been to endanger lives.

Fishing vessels have always presented the IMO with substantial difficulties, in that there is a large variation in the design and construction of fishing vessels, which make the standardisation of safety rules difficult to draft and more difficult to enforce. This has resulted in their exclusion from SOLAS and the Loadlines Convention.

The issue of safety of fishing vessels has been the subject of several attempts to standardise the safety requirements for these vessels, the first being the Torremolinos International Convention for the Safety of Fishing Vessels 1977. This convention contained safety requirements for the construction and equipment of new, decked, sea-going fishing vessels of 24 metres in length and over, including those vessels processing their catch. Existing vessels were not covered, other than in respect of their radio requirements. A contentious issue is grappled with in the convention, namely that of stability of fishing vessels. This has been one of the prime causes of sinking of fishing vessels and has been

recently highlighted by a number of significant cases in South Africa and the United States, in which the flag state survey system relating to the stability of vessels, has been reviewed and criticised by the courts. The recent sinking of the fishing vessel *Sadurhavid*, off the Falkland Islands, as a direct result of lack of control over the amendments to the stability of the vessel, resulted in a South African Court finding that the South African Registry was negligent in the application of the provisions of the Merchant Shipping Act.

The Torremolinos Convention was met with little enthusiasm and this resulted in it being amended in 1993 by the Torremolinos Protocol. The Protocol was aimed at removing the technical complexities that caused difficulties for flag states and thereby enabling the convention to be brought into effect as soon as possible. The rapid development in fishing vessel technology, and the more recent focus on deep water High Seas fishing, resulted in further strides being made in the design and safety of fishing vessels. In addition, these vessels are often operating in hostile environments and this protocol seeks to regulate safety on board and implement safety provisions with regard to machinery spaces, improved lifesaving appliances, immersion suits and thermal protective aids, satellite communication systems and other components of the GMDSS.

The Cook Islands is in the process of deciding whether or not to accede to the Torremolinos Protocol or to develop a unique Fishing Vessel Safety Code, drawing from both the Protocol and the New Zealand Maritime Safety Authority's Safety Code for Fishing Vessels.

Bare boat chartering, the genuine link and IUU vessels

The FAO initiatives in restricting the operation of IUU vessels have resulted to some extent in the reduction in the flexibility of operation of these vessels and their ability to flag hop. The emphasis of these initiatives, however, is a "top down" approach, through providing guidelines to flag states with suggested amendments to their legislation, and attaching certain stigmas to non-compliance. To this extent they provide useful guidelines for flag states in the quest to produce legislation that limits the activities of IUU vessels, but they are in many respects a "blunt instrument" in restricting the operations of IUU vessels. They are dependent on the will of the flag state itself to comply with the provisions of these instruments.

In practice, our experience has been that there are more practical ways of limiting the operation of IUU vessels and these are primarily focused upon the "nuts and bolts" of the legislation of the state concerned. Most IUU activity occurs in the context of the bare boat chartering of these vessels through various jurisdictions, to obfuscate the true ownership of the vessel. It is within this intricate matrix of ownership and bare boat chartering of the vessels that more attention should be focused:

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) gives considerable weight to the idea of a "genuine link" between the ship and the flag of the vessel and states in Article 91 that:

"Every state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship."

The "genuine link" has long been a problematic and controversial concept and particularly so where bare boat chartering is concerned. The judgment in the case of the "Saiga II" tells us that tells us that the "genuine link" is to do with effective control over the vessel, but does not tell us when the link must be established or in respect of which obligations it refers. After all, what does "effective control" mean?

Also, there is a clear lack of uniformity in private international law governing the registration of vessels, bare boat charter registration and the protection of ship's mortgages. In addition, the "suspension" of the private law provisions of the underlying registry causes confusion. In some cases

(South Africa and the Cook Islands on the "flagging in" of vessels) the private law provisions continue, and in other cases it would appear that they lapse (New Zealand and Cook Islands on the "flagging out of vessels"), coupled to varying requirements in bareboat charter registers regarding mortgagee consent (none in South Africa or New Zealand on "flagging in" but required in Cook Islands), creates an environment that allows unscrupulous operators to "flag hop". The United Nations Convention on Conditions for Registration of Ships 1986 sets a good standard and provides a number of protections built into the provisions of this convention. However, it is not yet in force and the lack of enthusiasm of the international community for a cessation to this convention is a reflection of the inherent complexities of the law.

It must not be forgotten that a bare boat charter is a contract and *not* a creature of statute. The Shipping acts mentioned governing the registration of vessels in bareboat charter registries, set out the public law consequences of registration. However, they do not deal with the underlying private law issues, which include the notional "knock on" effect of the frustration of or termination of the underlying bareboat charter, on the nationality of the vessel that is driven by the flag state.

In the event that the contract is cancelled, most bareboat jurisdictions will deny the vessel the right to fly the flag of the flag state (and thus become stateless), and by so doing would be in breach of the provisions of the relevant Ship Registration Act of the underlying registry which in most cases have a specific stipulation requiring the vessel (owned in that state) to be registered. The consequences of becoming stateless are various; not least of these is that the insurances on the vessel will lapse, and in addition, absent any clear indication of nationality, the vessel will be dealt with, in all likelihood, by the law of the jurisdiction in which it finds itself. So too the mortgagees may find themselves without the comfort of a registered mortgage, battling for a priority on the judicial sale of a vessel that was not within their contemplation when the funds were advanced. This places an increased onus on the flag state to ensure that the underlying contracts remain extant and provisions should be incorporated in legislation to deal with the termination of the charter. What is the "default" position if the contract is cancelled? Does the underlying registry assume "full flower"? It can only do so if the underlying flag state laws contemplate this. How to enforce or keep track of the change is a different matter.

Where to from here? The Cook Islands legislation (Shipping Act 1998, Part 3) sets the requirement for entry onto the bareboat charter register high by providing the Registrar with discretion to admit bareboat charter vessels on the production of a range of consents from, *inter alia*, the mortgagee. To this extent, the spirit and intention of the Cook Islands Shipping Act 1998 certainly endorses the laudable aims reflected in Article 91 and Article 92 of UNCLOS, particularly as interpreted by the 1986 Convention on Ship Registration.

The conundrum presented by the dual flagging dilemma is not so easily resolved. Various attempts at international regulation clearly indicate the lack of appetite for a uniform code regulating bareboat chartering and the position of the mortgagee. The 1986 Convention sets a good standard, but is not in force. The fishing industry, driven by the imperative to sustain stocks, has moved the debate to a new level, and much of what has been said can be applied in general maritime commerce. They are slowly making the "genuine link" less of a "missing link".

Indeed, the plethora of jurisdictions involved, and the variety of law arising, gives rise to alternative dictates. These include the public image of the register, and their striving to remain free of the international odium that clings to registries that are more interested in registration revenue than safety of vessels, and protection of their crew and the sanctity of the mortgage.

Finally, effective flag state administration is paramount. Due diligence on the part of the Registrar is vital in preserving the image of the flag and the rights of the vessel owners and mortgagees. Sloppy administration allows vessels to be flagged in multiple jurisdictions with the attendant abuses that follow.

The issues and problems mentioned above are being addressed by the Cook Islands and must be resolved, in part at least, if international objectives are to be met. Resolution of these issues is complex and will require extensive co-operation between the Cook Islands and those states that charter vessels onto the Register. This may involve numerous unique solutions depending on each state's unique laws. However, modern legislation and the implementation of the detail of the legislation, in line with internationally recognized best practice, will be an effective toolbox in curbing IUU operations.

The effect of sanctions

The importance of Regional Fishery Management Organizations (RFMOs) and the ability of their member states to impose trade sanctions on flag states seen to be operating out of compliance with the flag state legislation, has been emphasised recently by the International Commission for the Conservation of Atlantic Tuna (ICCAT), passing a resolution at the 2000 general commission meeting in Marrakech. The resolution called for the implementation of prohibitions (trade sanctions) on the import of products caught by vessels flagged in Equatorial Guinea, Belize and St Vincent & the Grenadines, as these flag states had a history of non-compliance with international efforts to conserve fish stocks. As a result of these sanctions vessels have either chosen, or have been asked, to seek another flag. The effect of which will be to simply transfer the problem into another jurisdiction. It is to be anticipated that approaches will be made to the Cook Island Registry by non-compliant vessel owners to reflag their vessels into the Cook Islands. The Cook Islands will refuse such applications. However, where these vessels end up will be anyone's guess and the question may be asked as to whether or not the fishery would have been better served by the vessels remaining with their previous flag and efforts made to encourage compliance. This in turn raises questions as to what purpose it serves to sanction all vessels of a given State, rather than individual offending vessels, if all it serves to do is trigger a total loss of control over the vessel.

Export documentation

The activities of IUU vessels are further curtailed by the recent implementation of systems governing the export of fisheries products through statistical documents/trade information (Certificate of Origin) schemes. An example of such a scheme is the export of Southern Blue Fin Tuna to Japan, which is governed by the provisions of the Commission for the Conservation of Southern Blue Fin Tuna (CCSBT). Further, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) has implemented similar, complex schemes in relation to the export of Patagonian Toothfish. The Cook Islands issues Certificates of Origin, Documents of Compliance and Hygiene Certificates for the export of product. The Certificate of Origin and Document of Compliance are issued on the basis of declarations. A false declaration can lead to a criminal prosecution. Hygiene Certificates are issued based on reports from properly authorised laboratories.

EXERCISE OF FLAG STATE CONTROL OVER FISHING VESSELS – MINISTRY OF MARINE RESOURCES

Registration trends

Since 2001, the Government domestic fishing policy has placed a moratorium on foreign fishing vessels operating in Cook Islands waters. This was part of an effort to encourage local participation and investment into the longline fishery. In 2003 however, the policy was amended to allow local companies to bare boat charter up to three foreign vessels as part of their existing operations, provided the vessels were registered and flagged in the Cook Islands.

Government currently only allows the use of horizontal longlining in Cook Islands waters, therefore ALL domestic commercial fishing vessels are longline vessels.

Access to Cook Islands waters by US Purse Seiners is allowed as part of a Multilateral Treaty between the US and the 16 member countries of the Forum Fisheries Agency.

In terms of the High Seas, the development, over the past two years, of a Deep Seas Trawl fleet of four vessels has been primarily in response to Cook Islands policy in relation to these types of vessels and has seen a growing interest from other similar vessels to register in the Cook Islands.

Restrictions on fishing vessels

These are imposed via the terms and conditions of the License and/or any applicable access agreement. Such conditions include provision for fisheries observers, vessel-reporting routines, catch reporting, area restrictions etc.

REGIONAL COOPERATION

The Cook Islands is a member of the Forum Fisheries Council, made up of 16 member states from within the South Pacific geographical area. Initiatives taken up by its Agency, the FFA, are supported by the Cook Islands. These initiatives are related to the management of the valuable tuna resources of the region and include the regional register of fishing vessels (FFA Regional Register), the FFA Regional VMS, the regional observer programme, the Niue Treaty (related to shared MCS activities between countries), the US Treaty on Fisheries, and so on.

The Cook Islands is also a member of the Pacific Community, whose Secretariat acts as the central repository for all catch data taken in the Western and Central Pacific Region. Most of the scientific analysis of this data is undertaken by the Secretariat, which provides scientific advice to its member countries in support of any management decisions taken either collectively or individually.

The Cook Islands has also signed the new Tuna Convention of the Western and Central Pacific and has been an active participant at the preparatory conferences leading up to the establishment of the Commission once the Convention comes in force. This Regional Fisheries Authority will have a mandate over the entire Western and Central Pacific Ocean in relation to the management of all highly migratory species (with a key focus on species with commercial value e.g. tropical tunas and billfish).

Concerning Cook Islands flagged vessels fishing on the high seas outside the immediate region; the government has been in regular contact with FAO as to developments regarding deep-water species in the Indian Ocean.

LAWS AND REGULATIONS RELATING TO THE EXERCISE OF FLAG STATE CONTROL OVER FISHING VESSELS

The major piece of legislation covering the control of any kind of fishing or fishing vessel is, as previously mentioned, the Cook Islands Marine Resources Act 1989, and the Fisheries Regulations 1995. It should also be noted here that the Cook Islands has also ratified UNCLOS, and the UN Fish Stocks Agreement.

MCS/ENFORCEMENT ACTIVITIES

Current Enforcement and MCS activities involve the placement of observers on domestic fishing vessels, and also providing observers for the regional observer programme run by FFA/SPC. In addition, a specific condition for all fishing licenses calls for the installation of VMS devices on the vessel. This is also part of a regional VMS system run by the FFA. This enables the fisheries authorities in the Cook Islands to track their vessels and monitor any suspected illegal fishing activities. The Cook Islands Government also has a surface patrol asset, and coordinates surveillance activities with the French and New Zealand Air forces within the Cook Islands EEZ.

INITIATIVES TAKEN BY GOVERNMENT IN THE CASE OF NON-COMPLIANCE WITH FISHERIES MANAGEMENT MEASURES

Non-compliance involving 'minor' infringements can result in written warnings where no further action is required. However, more than three written warnings may constitute grounds for a suspension or even cancellation of the vessel's license.

Prosecution of vessel owners for non compliance of their vessels, forfeiture of the vessels, suspension or cancellation of a vessel license, and the imposition of fines to both operator and/or owner are provided for in the legislation. All represent actions that have been taken by the Cook Islands government for non-compliance of fisheries management measures.

PORT STATE CONTROL

It is worthwhile to note here that in spite of relevant FAO guidelines for Port State Controllers to help combat IUU vessels, there does not seem to be much interest or activity from many Port States in implementing proper measures to look at fisheries issues. It is our perception that some Port State Controllers view fisheries violations as matters for other competent authorities and do not wish to extend their mandate to include them. This attitude is disappointing and to some degree subverts the efforts of Flag States to ensure compliance.

EXERCISE OF FLAG STATE CONTROL OVER FISHING VESSELS – CONCLUSIONS

The international trend is towards increasing regulation of the activities of fishing vessels, and the export of product caught utilising these vessels. The increasing prominence of regional fisheries organisations such as the Western and Central Pacific Convention for the Conservation and Management of Tuna, the Indian Ocean Tuna Commission, ICCAT and many others, will inevitably result in fishing vessel owners being obliged to flag their vessels in jurisdictions that are seen to be compliant with international fisheries conservation measures.

The effect of this complex matrix of international regulation is to present the Cook Islands Registry with an opportunity to develop an upmarket, compliant register aimed at fishing vessel owners that wish to fulfil their obligations in terms of the Code of Compliance and other international instruments. This presupposes an effective monitoring and control mechanism to limit the operation of these vessels. This will be an important step towards fulfilling the Government's policy of broadening the economy as it sets the stage for more direct and indirect investment in the Cook Islands (An example of which has been highlighted elsewhere in this report).

Some of the problems of exerting control have been described above, as well as the various measures currently taken or in the process of development to ensure the full compliance of Cook Islands vessels. We believe that good progress has been made in this regard as confirmed by:

- No Cook Islands vessel has ever been identified as IUU.
- Increased interest in the Cook Islands Registry by fishing vessel owners.
- Our recent removal from the ITF list of FOCs, after several years' inclusion.

Future developments relating to high seas fishing, domestic fishing and the registry

In the Cook Islands we recognise that there are still numerous tasks for us to address in order to fully comply with international requirements. Yet there will always be things for any State to achieve if they are to remain a competent and compliant jurisdiction.

Some of the things we seek to address are as follows.

The introduction of new legislation (i.e. new Marine Resources Act) aims to enable the Cook Islands to more adequately fulfill its obligations under international law, specifically in the areas of Flag State responsibility and control of nationals on the high seas. The draft Act also introduces more severe penalties for fisheries infringements, and the requirement for high seas fishing authorizations. It is anticipated the Act will be passed at the next sitting of Parliament in November this year.

In addition, a revised Shipping Act and a new Admiralty Act are currently being drafted to address the particular private law issues addressed previously and also to homogenise the shipping legislation with the new Marine Resources Act. New regulations will include the adoption and implementation of a safety Code for Fishing Vessels.

Other objectives include:

- To formalize the relationship between MCI (the Registry) and MMR (Marine Resources), through an MOU.
- To strengthen port inspections both domestically and internationally.
- To improve certification/hygiene standards (e.g. EU and HACCP) standards – this will require either a) additional legislation, or b) amendments to existing health legislation.
- Formal inter-government agreements regarding testing and approval of fisheries products especially in relation to EU exports.
- Ratification of the Western and Central Pacific Tuna Convention at the PrepCon hosted in the Cook Islands next week.

CYPRUS – A CASE STUDY

Gabriel P. Gabrielides¹

ABSTRACT

Two different Government Departments are responsible for the registration of fishing vessels. The main register for all vessels, known as the Cyprus Register of Ships (CRS), created in 1963, is kept by the Department of Marine Shipping. All fishing vessels greater than 15 gross tons (GT) are registered in the CRS. Smaller fishing vessels are registered in the Register for Small Fishing Vessels kept by the Department of Fisheries and Marine Research. This register includes about 600 local fishing boats. The CRS is an open register and attracts a great number of foreign vessels making it the sixth biggest in the world with a merchant fleet exceeding 26 million GT.

During recent years much work has been undertaken to transform the image of the Cyprus flag. New and stricter legislation has been enacted and new international conventions have been ratified. The policy for the registration of fishing vessels has been modified after a close cooperation of the two relevant Departments. It has been decided not to register and allow fishing vessels not belonging to Cypriot nationals to fly the Cyprus flag and that the ones already in the CRS should be encouraged to change flag. Fisheries legislation has been streamlined to allow monitoring, control and surveillance of fishing vessels irrespective of where in the world they fish. However, the CRS still includes foreign fishing vessels but they are registered "parallel-out" i.e. they fly another flag, not the Cyprus one. This issue is now being debated.

INTRODUCTION

Cyprus, widely known as the birthplace of Aphrodite, Goddess of Love and Beauty, has an area of 9 250 square kilometres and is situated in the eastern basin of the Mediterranean Sea.

Its history is long and turbulent as suggested by the numerous archaeological findings. The strategic location of Cyprus at the crossroads of Europe and Middle East attracted to the island a number of foreign invasions. Egyptians, Assyrians, Phoenicians, Persians, Ptolemies, Romans all left their imprint on the island. In this respect, Cyprus has received and, subsequently, absorbed external cultural influences while preserving the essence of Greek culture as is reflected in the language, religion, language, traditions and customs

In 1571, Cyprus was conquered by the Ottoman Turks who ruled the island until 1878, when Britain declared Cyprus a British colony. British colonization lasted until 1960 when Cyprus gained its independence. In 1974 Turkey invaded the island and since then occupies 37% of the land. Despite this, the free part of the Republic of Cyprus has enjoyed economic growth, high standards of literacy and the highest per capita income in the Eastern Mediterranean – attracting a large number of offshore companies and a great number of tourists year after year.

The Cyprus Registry created in 1963 has shown phenomenal growth. In 1981 Cyprus ranked thirty-second on the list of leading maritime nations. It now ranks sixth with a merchant fleet exceeding 26 million gross tons. The growth of the register was not proportional to the expansion of the Department of Merchant Shipping which is responsible for the development of maritime activities which include: Registration of ships, administration of the Merchant Shipping Laws, control of shipping and enforcement of international conventions, investigation of casualties, resolving labour disputes on board Cypriot ships and training and certification of seafarers. As a consequence proper control was not exercised and this was detrimental to the Cyprus flag. In recent years and especially

¹ Director, Department of Fisheries and Marine Research, Cyprus.

after the initiation of negotiations with the European Union the situation is changing rapidly and drastically.

REGISTRATION POLICY

The policy of the Government of Cyprus in the shipping sector is the continuous improvement of the existing infrastructure and the incentives available to both residents and non-residents.

The Cyprus Register of Ships (CRS) is an open register and the Department of Merchant Shipping (DMS) of the Ministry of Communications and Works, which is responsible for it, puts forward a number of reasons why a ship should be registered in Cyprus. These are:

Advantages of the country

- Sovereign flag.
- Member of the United Nations, the Commonwealth and the Council of Europe.
- Signatory to numerous international maritime conventions.
- Democratic country with a free market economy.
- Strategic location at the crossroads of three continents.
- Modern and efficient legal, accounting and banking services based on English practices.
- Extensive network of bilateral agreements through which Cypriot ships receive either national or favoured nation treatment in the ports of other countries (see Appendix I.1).
- Excellent telecommunications and easy access by air and sea.
- Highly qualified managerial, clerical and technical staff available.

Financial incentives

- **Competitive ship registration costs** and annual tonnage taxes.
- **Full protection** for financiers and mortgagees.
- **Double Tax Treaties** with 26 countries (see Appendix I.2).
- **No tax on profits** from the operation of a Cypriot registered vessel or on dividends received from a ship owning company.
- **No capital gains tax** on the sale or transfer of a Cypriot registered vessel or the shares of a ship owning company.
- **No estate duty** on the inheritance of shares in a ship owning company.
- **No income tax** on the emoluments of officers and crew.
- **No stamp duty** on ship mortgage deeds or other security documents.
- **Favourable tax regime** for ship management and other offshore enterprises.
- **Low set up and operating costs.**

There are two fishing vessel registries in Cyprus. Those vessels with a tonnage greater than 15 GT are registered in the CRS which is kept by the DMS according to the Merchant Shipping Laws. Those fishing vessels with a tonnage smaller than 15 GT are registered in the Small Fishing Vessel Register (SFVR) which is kept by the Department of Fisheries and Marine Research (DFMR) of the Ministry of Agriculture, Natural Resources and the Environment which is also the responsible agency for the granting of all fishing licenses. All vessels registered in the SFVR belong to the artisanal fisheries and operate within territorial waters. Vessels registered in the CRS operate within and outside territorial waters or exclusively outside territorial waters.

Until the year 2000, according to the Fisheries Law, only vessels fishing within the territorial waters of the Republic were required to obtain a fishing licence from DFMR. All foreign owned fishing vessels applying for registration in the CRS were fishing not only outside territorial waters but even outside the Mediterranean and therefore they were not obliged to have a fishing license and as a consequence they were unknown to DFMR.

In 1999, the DMS together with DFMR developed a policy for the registration of fishing vessels and for the granting of fishing licences. A decision was taken to modify the Fisheries Law and Regulations as well as the Government policy for the registration of fishing vessels in the CRS.

New Government registration policy

The new Government policy for the registration of vessels in the CRS came into effect on 1 January 2000. The new policy has a special section on fishing vessels and takes into consideration the size and age of the vessel as well as its beneficial owners. More specifically,

Vessels over 24 metres in length not exceeding 20 years of age

- a) A fishing vessel in this category may be registered provisionally, permanently, or parallel-in in the Cyprus Register of Ships provided that at least 50 percent of the shares of the ship owning company or the bare boat charterer, as the case may be belongs beneficially to Cypriot citizens, at least 50 percent of the Directors of such company are Cypriot citizens and its management and operations are directed and controlled from within Cyprus.

This requirement does not apply to fishing vessels which apply simultaneously for parallel out registration and will not be engaged in fishing operations while under the Cyprus flag and to fish factory vessels.

- b) Notwithstanding other applicable provisions of the Cyprus merchant shipping legislation:

- (i) Fishing vessels should comply and should be surveyed and certificated (provided with a certificate of compliance) in accordance with the applicable provisions of the Protocol of 1993 to the International Convention for the Safety of Fishing Vessels, 1977 (Torremolinos Protocol).

Furthermore, fishing vessels of 24 meters in length and over, which are landing their catch in Cyprus or in any State Member of the European Communities should comply with the requirements of the European Communities Council Directive 97/70/EC and should be provided with a certificate issued in accordance with Article 6 of the aforesaid Directive.

In case of fishing vessels falling outside the scope of application of the Torremolinos Protocol, the Department of Merchant Shipping will determine the requirements to be complied with on the basis of the IMO/ILO/FAO recommendations.

In all cases, fishing vessels should be provided with a Certificate of Compliance to be issued by one of the organizations recognized and authorized to act on behalf of the Cyprus Government in the framework of Regulation I/6 and XI/1 of SOLAS 74 as amended and will be subject to inspection under the terms of the Torremolinos Protocol and the aforesaid European Communities Council Directive or the requirements to be set out by the Department.

- (ii) Fish Factory Vessels should comply and should be surveyed and certificated in accordance with the requirements of the Code of Safety of Special Purpose Ships (IMO Assembly Resolution A.534 (16) as amended).

- c) A Fishing or Fish Factory vessel over 15 years of age must pass a special inspection.
- d) Owners of fishing vessels of any size and age must submit, as a condition for the registration of such vessels, a declaration stating that they will abide, at all times, by the prevailing government policy in respect of fishing, particularly as regards the preservation of protected species and the prohibition of the use of certain fishing equipment. Also, before engaging in any fishing activities while flying the Cyprus flag, they should secure a fishing license from the Department of Fisheries and Marine Research of the Ministry of Agriculture, Natural Resources and the Environment. Engagement of a vessel flying the Cyprus flag in fishing activities without a fishing license constitutes a breach of the conditions for its registration and warrants its deletion from the Cyprus Register.

Vessels less than 24 meters in length of any age and vessels over 24 metres in length exceeding 20 years of age

- a) Vessels in this category may be registered provisionally, permanently, or parallel-in in the Cyprus Register of Ships provided that at least 75 percent of the shares of the ship owning company or the bareboat charterer, as the case may be, belongs beneficially to Cypriot citizens and at least 75 percent of the Directors of such company are Cypriot citizens and its management and operations are directed and controlled from within Cyprus.
- b) A vessel over 24 meters in length in this category, must comply with the provisions of paragraph 1(b) above.
- c) A vessel less than 24 meters in length and over 15 years of age or over 24 meters in length, in this category, must pass a special inspection.
- d) Owners of fishing vessels of any size and age, must submit, as a condition for the registration of such vessels, a declaration stating that they will abide at all times, by the prevailing government policy in respect of fishing, particularly as regards the preservation of protected species and the prohibition of the use of certain fishing equipment. Also, before engaging in any fishing activities while flying the Cyprus flag they should secure a fishing license from the Department of Fisheries and Marine Research of the Ministry of Agriculture, Natural Resources and the Environment. Engagement of a vessel flying the Cyprus flag in fishing activities without a fishing license constitutes a breach of the conditions for its registration and warrants its deletion from the Cyprus Register.

As a consequence, since 1 January 2000 DMS will not register fishing vessels without the consent of the DFMR. DMS has entered the race for harmonization of the Cyprus legislation with that of the European Union. Greater emphasis is now given on the implementation of national legislation and of international Conventions. The administrative capacity of DMS is expanding continuously especially in the sector of inspections.

REGISTRATION

Responsibility for the development of maritime activities lies with the Ministry of Communications and Works. Its authority and jurisdiction are exercised through the Department of Merchant Shipping which is located in Limassol and administers the Cyprus Register of Ships established in 1963. The Department's activities include: registration of ships, administration and enforcement of the merchant shipping legislation, control of shipping and enforcement of international conventions, investigation of marine casualties, resolving labour disputes on board Cypriot ships, and training and certification of seafarers.

The administration of the Register of Cyprus Ships is governed by the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws, 1963 to 1996 which are based on the British Merchant Shipping Acts, 1894 to 1954. The Merchant Shipping (Masters and Seamen) Laws, 1963 to 1997 and the Merchant Shipping (Fees and Taxing Provisions) Laws, 1992 to 1999 are the other principal merchant shipping laws. The law governing companies is The Companies Law, Chapter 113

of the Statute Laws of Cyprus, as amended. This law is modelled on the United Kingdom Companies Act, 1948.

The Register of Small Fishing Vessels (<15 GT) established in 1971 is administered by the Department of Fisheries and Marine Research of the Ministry of Agriculture, Natural Resources and the Environment which is located in Nicosia.

A vessel may be registered in the CRS if more than one half of the shares of the ship are owned by:

- a Cypriot or;
- a corporation established and operating under and in accordance with the laws of the Republic of Cyprus and having its registered office in the Republic or;
- a corporation incorporated outside the Republic in which the controlling interest is vested in Cypriots (physical persons), if specially authorized by a decision of the Council of Ministers of the Republic.

In view of the above requirements, all non-Cypriot owners who wish to register their ships under the Cyprus flag they incorporate a company in Cyprus which will either acquire the ship in its name, or bareboat charter the ship.

Practice and custom have created a special type of Cyprus ship owning company which is limited by shares and has a nominal capital, usually CY£1 000 divided into 1 000 shares of CY£1 each.

In accordance with the Advocates Laws of Cyprus, only local lawyers are entitled to draft the necessary documents for the incorporation of Cypriot companies. Therefore, persons interested in registering a vessel under the Cyprus flag engage the services of a local lawyer who creates and represents a company.

The main types of vessel registration in Cyprus are provisional, permanent and parallel registration.

As of 1 January 2000, vessels of any size and type having an age not exceeding 15 years, except fishing vessels, may be registered in the Cyprus Register of Ships as long as they comply with the provisions contained in the merchant shipping legislation and the circulars of the Department of Merchant Shipping.

Vessels over 15 years of age, including fishing vessels, may be registered in the Cyprus Register of Ships under additional conditions, which must be fulfilled concurrently with the submission of the application for registration and must be complied with at all times while the vessel remains registered, irrespective of any subsequent transfer of ownership.

Parallel registration

Under Cypriot legislation parallel (bare boat) registration of vessels is possible. The legislation provides for the two forms of internationally accepted bareboat registration: 'Parallel-in' registration and 'Parallel-out' registration. These two options offer some very interesting opportunities for leaseback, hire purchase and finance arrangements. The administrative practice of the Department of Merchant Shipping has confirmed that the parallel (bareboat) registration of vessels under the Cyprus regime is possible with more than 20 States whose legislation is compatible with Cypriot legislation.

Under the Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws, 1963-1996, Cypriot ships may be bareboat chartered to a foreign person or company and registered 'parallel' in a

foreign register for the duration of the charter party. This so called 'Parallel-out' registration allows the financing of a ship and her mortgaging under the Cyprus flag and her registration in a foreign registry through a bareboat charter arrangement.

The parallel-out registration of a Cypriot ship is possible if she is bareboat chartered to a foreign individual or corporation and the law of the country of the foreign registry allows the parallel registration of vessels of another registry, under prerequisite conditions similar to those set out for the parallel-in registration of ships in the Cyprus Register of Ships.

This type of registration is possible for Cypriot ships which are provisionally or permanently registered in the Cyprus Register of Ships. The parallel-out registration of a Cypriot ship must be approved by the Minister of Communication and Works.

The owner/bareboat charterer of a vessel registered under the Cyprus flag automatically undertakes that, whenever the Department of Merchant Shipping deems necessary, to have the vessel inspected by its own surveyors as a result of identified deficiencies or an alleged serious violation of international conventions. The owner/bareboat charterer is required to submit the vessel for inspection, at his expense, in order for the Department to determine whether the vessel meets the applicable statutory requirements. A number of classification societies are recognized to act on the Department's behalf (see Appendix I.3).

There are detailed requirements for the registration of fishing and fish factory vessels of any age covering ownership, safety, fishing activities and hygiene (see above).

Mortgages

Once a ship has been registered under the Cyprus flag, a mortgage can be created thereby securing a loan or other financial obligations on conditions agreed to by the parties without the need for exchange control permission. The creation of a mortgage under Cypriot laws is not allowed on vessels registered parallel-in in the Cyprus Register of Ships.

A mortgage once created must be deposited with the Registrar of Cyprus Ships or with a consular officer on the instructions of the Registrar. Whether deposited with the Registrar or with a consular officer, the mortgage is recorded thereafter in the Register as from the date and hour of its deposit and remains an encumbrance on the vessel until discharged by the mortgagees. A mortgage may be created independently of whether the ship is provisionally or permanently registered.

If the ship on which a mortgage was created belongs to a Cypriot company, the mortgage will also have to be registered with the Registrar of Companies within a maximum period of 42 days after its creation. The mortgagee's security is protected in the case of liquidation of the ship owning company. Transfer of a mortgage may be affected by completing the statutory form of transfer and submitting it to the Registrar of Cyprus Ships or to a consular officer. The fees payable on transfer are the same as those for the registration of the mortgage on the ship.

In order to discharge a mortgage, a memorandum of discharge will need to be duly executed by the mortgagee. It will then have to be attested and delivered to the Registrar of Cyprus Ships or a consular officer on the instructions of the Registrar.

Fees and taxes

Although Cyprus has much to offer in terms of infrastructure and maritime administration ultimately the bottom line is costs. In terms of registration fees and taxes, Cyprus is considered to be among the most competitive shipping centres in the world. The fees listed below are lower than those of Cyprus' main competitors.

The fees are expressed in Cyprus Pounds (CY£1 = 100 cents). The average exchange rate is CY£1 = €1.7.

The registration fees are calculated as follows:

For vessels other than passenger ships

GROSS TONNAGE	CENTS
For each unit up to 5 000	10
For each additional unit between 5 001 –10 000	8
For each additional unit over 10 000	4

The minimum fee is C¥€125 and the maximum fee is C¥€3 000

Corporation tax

Under Section 4 of the Merchant Shipping (Fees and Taxing Provisions) Laws 1992-2000, corporation tax on profits from the operation of a Cypriot registered vessel, or on dividends received from a ship owning company, is zero.

Tonnage tax

For vessels other than passenger ships the tonnage tax is calculated as follows:

$$(\text{BASIC CHARGE} + \text{GROSS TONNAGE INCREMENT}) \times \text{AGE MULTIPLIER}$$

The basic charge is C¥€100 and the gross tonnage increment is calculated as follows:

GROSS TONNAGE	CENTS
For each unit up to 1 600	26
For each additional unit between 1 601-10 000	16
For each additional unit between 10 001-50 000	6
For each additional unit over 50 000	4

The age multiplier is shown below:

AGE *	SHIP RATE MULTIPLIER
Up to 10 years	0.75
11-20 years	1.00
Over 20 years	1.30

* This is calculated by taking the year in which the keel was laid and then deducting it from the year of assessment of the tonnage tax.

Fees for the Registration, Transfers or Discharge of Mortgages

For the registration of transfer of a mortgage with the Registrar of Ships, the fees payable are calculated as follows:

GROSS TONNAGE	CENTS
For each unit up to 10 000	2
For each additional unit over 10 000	1

The minimum fee is C¥€30.

No specific fee is payable for the discharge of mortgages.

Fees for the Transfer of Ships

For the transfer of a ship to the ownership of another Cypriot company, the fees payable are calculated as follows:

GROSS TONNAGE	CENTS
For each unit up to 10,000	2
For each additional unit over 10,000	1

The minimum fee is C¥£30.

Fees for the Deletion of a Ship from the Register of Cyprus Ships

No fee is payable for deletion of ships. However, all other statutory fees and taxes due or in arrears at the time of the vessel's deletion should be paid.

Radio Station Fees

Licence to install and work a wireless telegraphy and/or telephony station on board	C¥£10
Renewal of wireless telegraphy/telephony station licence	C¥£10

The initial licence is valid for 1 year from the date of the provisional registration of the vessel under the Cyprus flag. The renewal fee becomes due on the date of expiry of the initial licence.

Other Fees

Examination of an application for the registration of a vessel in the Register of Cyprus Ships	C¥£15
Examination of an application for change of the vessel's name	C¥£15
Approval of the change of the vessel's name	C¥£80
Issue of a provisional certificate of registry or a certificate of registry	C¥£10
Granting of ship's carving and marking note	C¥£10
Issue of transcript of registry	C¥£10

For various other services or for the issue of certain certificates other minor fees are also payable.

Fees and Taxes Payable on Provisional Registration

The following fees and taxes are payable at the time of the provisional registration of a vessel:

- registration fees;
- tonnage tax for 6 months;
- fees for obtaining a licence to install and work a wireless telegraphy and/or telephony station;
- fee for the issue of the provisional certificate of Cyprus Registry.

These should be paid not later than the date on which the provisional registration of the vessel will be affected.

PROCEDURE FOR THE REGISTRATION OF FISHING VESSELS

Cypriot merchant shipping legislation allows for the provisional registration of a vessel (if at the time of registration the vessel is situated at a port outside the Republic and provided it was not a Cypriot ship) and most owners usually opt to have their ship provisionally registered first. This will allow them time (up to 9 months, including a 3 month extension) during which they will be able to complete the administrative formalities for permanent registration.

The application for registration of a ship under the Cyprus flag must be made by a local lawyer to the Minister of Communications and Works through the Registrar of Cyprus Ships. In practice, the Registrar will also accept the submission of applications for registration of ships on behalf of companies under formation, so that incorporation of the company and registration of the ship can progress simultaneously but the company must be duly incorporated prior to the registration of the vessel.

A ship may be provisionally registered under the Cyprus flag at any diplomatic mission or consular post of the Republic of Cyprus abroad (hereinafter referred to as 'consular officer') who will act on instructions issued by the Registrar of Cyprus Ships.

At the time of her provisional registration under the Cyprus flag a ship must be at a port outside the Republic so that she can be surveyed and certified on behalf of the Cypriot government. The presence of the ship at the port or place where the provisional registration will be affected is not necessary.

Application for provisional registration

In order to enable the Registrar of Cyprus Ships to initiate the procedure for the provisional registration of a ship, the following information is required:

- name of the vessel and her flag at the time of the application;
- name of the Cyprus corporation applying for the registration of the vessel;
- name of the vessel under which she will be registered;
- particulars of the vessel (type, year of built, gross and net tonnage);
- name of the classification society with which the ship is entered. If the owners of the vessel contemplate a change of the classification society on acquiring the vessel this should also be stated;
- intended trading area of the vessel;
- place where the vessel will be at the time of her provisional registration, if known. This must be communicated to the Registrar of Cyprus Ships prior to the provisional registration;
- name of the consular officer where the owners wish to effect the provisional registration of the vessel;
- name and address of the shareholders and directors of the Cypriot company in whose ownership the vessel will be registered.

Supporting documentation/information

The following documents/information must be forwarded to the Registrar of Cyprus Ships together with the application for the registration of the vessel, or must reach the Registrar on a later date soon thereafter but definitely prior to the dispatch of instructions for the provisional registration of the vessel under the Cyprus flag:

- memorandum and articles of association of the Cypriot company in whose ownership the vessel will be registered;
- certificate of incorporation of the company;

- certificate of shareholders of the company;
- certificate of directors and secretary of the company;
- confirmation of class (and / or a statement attesting to the class position of the vessel) from the head office of the classification society with which the ship is entered. This communication must also include a statement that the society is ready to proceed with the survey and certification of the vessel on behalf of the Cypriot government in accordance with the applicable requirements of SOLAS 74 as amended, LOADLINES 66, MARPOL 73/78 as amended, as well as in accordance with any other IMO codes or resolutions on safety or marine environment pollution prevention which may be applicable to her. It should be noted that any recommendations which may arise as a result of the said surveys must be dealt with. The societies have been instructed not to issue to Cypriot ships, at the time of provisional registration under the Cyprus flag, any statutory certificates which list outstanding recommendations of whatever nature;
- confirmation from the radio traffic accounting authority which will cover the vessel whilst under the Cyprus flag, that a contract has been signed between them and the owners of the vessel providing for the settlement of the ship's radio traffic accounts with the telecommunications authorities of the different countries which may serve her.

If the vessel has an age in excess of 15 years the additional requirements and/or conditions imposed by the Department of Merchant Shipping must be satisfied prior to her registration.

Instructions for provisional registration

The Registrar of Cyprus Ships will then proceed to instruct the consular officer to proceed with the provisional registration of the vessel, provided the following documents are deposited with him:

- resolution of directors of the Cypriot company resolving to acquire the vessel and register her in the Register of Cyprus Ships and the appointment of one or several attorneys who will appear before the consular office for matters concerning the registration of the ship;
- power of attorney empowering those concerned to attend matters concerning the registration such as the filing and signing of the bill of sale, the declaration of ownership (form MS.3), the memorandum of appointment of ship's husband (form MS.10) which must be executed pursuant to the above resolutions, under the common seal of the company. This must be signed by one or two directors (depending on the sealing provisions in the articles of association of the company) and must be either notarially attested or legalised by a Cyprus consular officer;
- declaration of ownership (form MS.3);
- memorandum of appointment of ship's husband (form MS.10);
- bill of sale whereby the ship is sold to the company, duly executed by her registered owners. The bill of sale must be certified by the consular authorities of the country of the previous registry;
- certificate of ownership and encumbrances from the ship's previous registry attesting that the ship is free of encumbrances and that she may be transferred to another registry;
- application for licence to install and work a wireless telegraphy and/or telephony station on board ship under the Cyprus flag (form MS.34).

Any of the documents set out above may also be deposited with the Registrar of Cyprus Ships at any time preceding the ship's provisional registration.

Completion of provisional registration

Provided that the appropriate fees have been paid and all the necessary documentation has been deposited either with the Registrar of Cyprus Ships or with any diplomatic mission or honorary

consular officer of the Republic, the consular officer who has been instructed to carry out the ship's provisional registration will proceed to:

- issue a provisional certificate of the Cyprus Registry (form MS.5), which is valid for 6 months from the date of issue;
- issue a provisional radio licence;
- advise the vessel's classification society that it may proceed with the survey and certification of the vessel on behalf of the Cypriot government.

The ship owner must ensure that the ship does not leave the port where she is lying unless and until she has been duly surveyed and certificated by her classification society on behalf of the Cypriot government.

Extension of provisional registration

A three month extension of the ship's provisional registration may be obtained, provided the provisional certificate of Cyprus Registry has not expired and the appropriate extension fees have been paid. For this purpose an application has to be made by the local lawyer acting on behalf of the ship owning company to the Minister of Communications and Works through the Registrar of Cyprus Ships, requesting the extension of the ship's provisional registration.

In the said application, the Cyprus diplomatic mission or honorary consular officer to whom the provisional certificate of Cyprus Registry will be presented for extension should be stated. The Registrar of Cyprus Ships will consider the application and will proceed and instruct the consular officer indicated above to effect the necessary endorsement of the provisional certificate of the Cyprus Registry.

Permanent registration

The permanent registration of a provisionally registered vessel must be affected within nine months (if the three month extension has been obtained) from the date on which she was provisionally registered.

Application and documentation

The following documents must be submitted to the Registrar of Cyprus Ships:

- application for permanent registration made by the local lawyer acting on behalf of the ship owning company to the Minister of Communications and Works through the Registrar of Cyprus Ships, requesting the permanent registration of the vessel in the Register of Cyprus Ships;
- certificate of deletion of the vessel from the previous register or certificate of cancellation of registry or closed transcript of registry, if this was not filed at the time of provisional registration;
- copy of the agreement signed with the vessel's radio traffic accounting authority;
- copies of the ship's statutory certificates, i.e.
 - cargo ship safety construction
 - cargo ship safety equipment
 - cargo ship safety radio
 - international load lines certificate (1966)
 - international oil pollution prevention
 - international noxious substances pollution prevention
 - passenger ship safety
 - certificate of fitness

➤ as these apply to the ship's size and type

- certificate of survey (form MS.1 or MS.1A);
- Cyprus tonnage certificate (form MS.12, or MS12A or MS.12B);
- international tonnage certificate (1969) (form MS.12C);
- duly verified ship's carving and marking note (form MS.32).

If the vessel exceeds 15 years of age the applicable requirements or conditions under which her registration has been approved should be complied with.

FISHING AUTHORIZATIONS AND FLAG STATE CONTROL OVER FISHING VESSELS

Obligation to obtain a fishing licence

As mentioned above, in the year 2000 the fisheries law and regulations were amended. In broad terms, the amendments impose the obligation on all Cyprus flag fishing vessels to be furnished with a fishing licence, establish the criteria for the granting of licences, put the basis for the creation of a fishing vessel register and a vessel monitoring system and promote the concept of the genuine link of the fishing vessel with the flag state.

As stated above, until the year 2000, only vessels fishing within the territorial waters of the Republic of Cyprus were required to obtain a **fishing licence** from the Department of Fisheries and Marine Research (DFMR). With the new provisions of the Law, all vessels flying the Cyprus flag which are engaged in fishing activities, irrespective of their length and of the fishing area they operate, are required to obtain a fishing licence issued by DFMR. Furthermore, this licence constitutes a prerequisite, in order to obtain a **fishing permit** from another State or International Organization. However, Cyprus vessels registered parallel-out in a foreign register, on the basis of a bareboat charter arrangement and flying the flag of the country of the foreign register, are exempted from the obligation to have a fishing licence issued by the Cypriot authorities, as long as they remain registered parallel-out and fly the flag of the foreign register.

According to section 3(2) of the Law as amended, a fishing licence is issued provided the Director is satisfied that the following conditions are fulfilled:

- a)
 - (i) More than one half of the shares of the vessel are beneficially owned by a Cypriot citizen and/or by a Cypriot legal person, provided that at least 51 percent of the shares of such a legal person belongs beneficially to Cypriot citizens and at least 50 percent of its Directors are Cypriot citizens; or
 - (ii) In case the vessel is registered in the Register of Cyprus Ships and flies the Cyprus flag by virtue of sections 23 C and 23 D of the *Merchant Shipping (Registration of Ships, Sales and Mortgages) Laws 1963-1996*, or it is registered under a foreign flag, its charterer is a Cypriot citizen and/or a Cypriot legal person, provided that at least 51 percent of the shares of such a legal person belongs beneficially to Cypriot citizens and at least 50 percent of its Directors are Cypriot citizens.
- b) In the case of vessels exceeding 20 years of age, the above required shareholding percentages are increased to 75 percent.
- c) The vessel's management and operations are directed and controlled from within the territory of the Republic of Cyprus.

The above three prerequisite conditions must be **continuously complied with**, from the date of issue, until the date of expiration of the licence. If any one of these three conditions ceases to be fulfilled, the Director must be consequently informed within 15 days, and upon that, he has the right

to terminate the validity of the licence. In case the Director is not informed within the 15 days period, the licence is deemed suspended (section 3(3) of the Law as amended).

According to the new legislation, Cyprus flag vessels are entitled to carry fishing operations in areas which are under the exclusive jurisdiction of a foreign State or of an International Organization, provided that they are concurrently furnished with both a **fishing permit** issued by the foreign State or the International Organization and a fishing licence issued by the Cypriot authorities.

Furthermore, according to new section 4A of the Law as amended, the owner, or in the case of a lease (chartering), the operator (charterer) of the vessel, for which a **fishing permit** has been issued by a foreign State or by an International Organization, is required to inform in writing of this permit, the Director of DFMR within 30 days from the date of its issue (a photocopy of the fishing permit must be produced). In case the Director realizes that he was not informed in time as required above, he may refuse to renew the fishing licence of the vessel concerned.

Penalties

Any person using a vessel flying the Cyprus flag in fishing activities without a fishing licence or with a fishing licence whose prerequisite conditions are not **fulfilled at all times**, and the owner of such vessel, or in case of a lease (chartering), its operator (charterer), shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding 3 years or to a fine not exceeding 10000 Cyprus pounds or to both such imprisonment and fine. In this respect, the existence of fishing gear on board the vessel constitutes a *rebuttable presumption* that the vessel is used for the purpose of catching fish (section 3(5) of the Law as amended).

No fishing permit may be requested and/or obtained, unless the vessel is already furnished with a fishing licence issued by DFMR. The penalties for this contravention are the same as those above.

Record of fishing vessels

With the latest modifications to the fisheries legislation and the policy for registration there is a tight control as to which vessels are registered in the CRS. The DMS continues to do the actual registration but only with DFMR's consent which is responsible for the newly created Fishing Vessel Register which is going to be run according to the EU regulations. Such consent is only given when it does not violate the EEC regulations related to the Fishing Vessel Register.

According to article 6 of the Registration Law, a vessel can be deleted from the CRS for a number of reasons especially when it violates the law and regulations concerning registration. Recently, it has been decided to modify this article and include another reason for loss of nationality which refers to violation or breach of legislation concerning the activity of the vessel. In other words, fishing vessels can be stricken off the CRS if they violate fishing regulations and especially if they fish without a fishing licence.

Recent registrations concerned only Cypriot fishing vessels. However, foreign fishing vessels (usually of Russian ownership) are seeking registration. These vessels normally possess a fishing permit from their own country but would like to be registered in the CRS in order to benefit from mortgages, loans, etc. These foreign fishing vessels are obliged to be simultaneously registered parallel-out.

It is noted that Cypriot vessels registered parallel-out must hoist the flag of the foreign registry and cannot use the Cyprus flag. Also the port of registry marked on the stern of the vessel must be that of the foreign registry.

Transfers of ownership and any transactions affecting mortgages (i.e. creation, registration, transfer and discharge) on Cypriot ships registered parallel-out are exclusively governed by Cypriot legislation and no action in relation to these matters may be taken by the foreign registry.

Entries made in the Cyprus Register of Ships regarding transfers of ownership or mortgages on Cypriot ships registered parallel-out are only notified by the Registrar of Cyprus Ships to the foreign registry.

Ratification of international conventions

Cyprus has ratified the major international conventions on maritime safety, prevention of pollution of the sea, training, certification and watch keeping of seafarers and limitation of ship owners' civil liability in case of oil pollution damage and conventions on maritime labour. **Appendix 1.4** provides a list of the treaties to which the Republic is a contracting party and for which the International Maritime Organization and the International Labour Organisation are the depositaries.

Cyprus is also party to the Convention on the High Seas, 1958 and the United Nations Convention on the Law of the Sea, 1982 as well as to the following Fisheries Conventions: General Fisheries Commission for the Mediterranean, International Convention for the Conservation of Atlantic Tunas, The FAO Compliance Agreement and the UN Straddling fish stocks on high seas.

Manning

Officers and ratings serving on board Cyprus flag ships are not required to hold any license or certificate issued by the Cypriot government, permitting them to perform duties on board. They must, however, be in possession of an appropriate, recognised and valid certificate of competency for the post they hold on board. A list of states whose certificates of competency have been recognised by Cyprus is found in **Appendix 1.5**.

Provisions in the Republic's merchant shipping legislation stipulate that 15 percent of the crew of a Cypriot ship must be Cypriot. However, due to the limited availability of Cypriot seamen, crew members may be of any nationality but must be holders of certificates of competency issued by one of the countries whose certificates of competency Cyprus has recognised.

Recent developments

Upon the insistence of the DFMR, the issue of whether the registration of foreign fishing vessels at all should be allowed is now debated. DFMR insists that fishing vessels should not be included in the CRS irrespective of the fact of flying a Cyprus flag or not. The argument is that presence of such vessels in the CRS may eventually create problems.

The Cyprus Government is now ready to sign a contract with a private firm for the installation of a vessel monitoring system through satellite. According to new regulations being promoted to Parliament, all vessels bigger than 15 metres and all those vessels irrespective of size which fish outside territorial waters must install a blue box on board so that they can be tracked by the system.

Finally, it must also be mentioned that in the framework of the harmonization of Cypriot legislation with the European acquis, a considerable number of laws were enacted by Parliament. Some of them concern new legislation and others modify existing legislation. Some of these laws have not yet entered into force.

APPENDIX I.1

BILATERAL AGREEMENTS ON MERCHANT SHIPPING BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CYPRUS AND GOVERNMENTS OF OTHER STATES

The aim of these agreements is to promote friendly relations between Cyprus and other countries, explore areas of cooperation related to shipping which could benefit the economic development of both countries, and facilitate seaborne trade and employment of seamen. Agreements with the following states are in force:

- Bulgaria
- India
- Lithuania
- People's Republic of China
- Philippines
- Poland
- Romania
- Russia
- Sri Lanka
- Syria

Agreements with Algeria, Cuba and Latvia have been signed and will enter into force soon. Agreements with Egypt, Iran, Estonia, Hungary and Thailand, have been initialled and their signature is pending. The existing agreements with Poland, Philippines, Romania and Sri Lanka have been amended.

Most of these agreements contain provisions for the employment of qualified seamen from these countries on Cypriot ships.

APPENDIX 1.2

DOUBLE TAX TREATIES

Cyprus has concluded a number of treaties whose main purpose is the avoidance of double taxation of income earned in any of the countries concerned. Treaties with the following states are in force:

- | | |
|------------------|----------------|
| • Belarus | • Malta |
| • Belgium | • Mauritius |
| • Bulgaria | • Norway |
| • Canada | • Poland |
| • China | • Austria |
| • CIS* | • Romania |
| • Czech Republic | • Russia |
| • Denmark | • Singapore |
| • Egypt | • Slovakia |
| • France | • Slovenia |
| • Germany | • South Africa |
| • Greece | • Sweden |
| • Hungary | • Syria |
| • India | • Thailand |
| • Ireland | • UK |
| • Italy | • USA |
| • Kuwait | • Yugoslavia |

All treaties refer to those which have been ratified.

** Includes Armenia, Azerbaijan, Kyrgyzstan, Moldova, Tajikistan, Ukraine, Uzbekistan but excludes Belarus, Kazakhstan, Russia and Turkmenistan*

**CLASSIFICATION SOCIETIES RECOGNISED
BY THE GOVERNMENT OF CYPRUS**

- American Bureau of Shipping (ABS)
- Bureau Veritas (BV)
- China Classification Society (CCS)*
- Cyprus Bureau of Shipping (CBS)*
- Det Norske Veritas (DNV)
- Germanischer Lloyd (GL)
- Hellenic Register of Shipping (HRS)
- Korean Register of Shipping (KRS)
- Lloyd's Register of Shipping (LRS)
- Nippon Kaiji Kyokai (NKK)
- Polski Rejestr Statkow (PRS)**
- Registro Italiano Navale (RINA)
- Registrul Naval Roman (RNR)**
- Russian Maritime Register of Shipping (RS)

* Will no longer be recognized. CBS only for boats up to 500 tons.

Classification Societies authorised to carry out assessment, auditing, verification and certification of safety management system, on behalf of the Government of the Republic of Cyprus

- American Bureau of Shipping (ABS)
- Bureau Veritas (BV)
- Det Norske Veritas (DNV)
- Germanischer Lloyd (GL)
- Lloyd's Register of Shipping (LRS)
- Nippon Kaiji Kyokai (NKK)
- Registro Italiano Navale (RINA)
- China Classification Society (CCS)*
- Hellenic Register of Shipping (HRS)*
- Korean Register of Shipping (KRS)*
- Russian Maritime Register of Shipping (RS)*

* Restricted conditions

INTERNATIONAL CONVENTIONS FOR WHICH THE INTERNATIONAL MARITIME ORGANIZATION PERFORMS DEPOSITORY FUNCTIONS AND TO WHICH THE REPUBLIC OF CYPRUS IS A CONTRACTING PARTY

- International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS 74 as amended)
- Protocols to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT, 1978 as amended SOLAS PROT, 1988)
- Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 72 as amended)
- International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 thereto (MARPOL 73/78 as amended) (Annexes I, II and V)
- International Convention on Load Lines, 1966 (LL 1966)
- Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT, 1988)
- International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE, 1969)
- International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC, 1969)
- Protocols to the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT 1976, CLC PROT 1992)
- Special Trade Passenger Ships Agreement, 1971 (STP 1971)
- Protocol on Space Requirements for Special Trade Passenger Ships, 1973 (SPACE STP, 1973)
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND, 1971)
- Protocols to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND PROT, 1976; FUND PROT, 1992)
- International Convention on Standards of Training, Certification and Watch keeping for Seafarers, 1978 as amended (STCW, 1978 as amended including 1995 amendments)
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters, 1972, as amended (LDC, 1972)
- Convention on the International Maritime Satellite Organization (INMARSAT) as amended (INMARSAT C)
- Operating Agreement on the International Maritime Satellite Organization (INMARSAT) as amended (INMARSAT OA)
- International Convention on Maritime Search and Rescue, 1979 (SAR, 1979)
- International Convention for Safe Containers, 1972 (CSC, 1972)
- Convention for the Suppression of Unlawful Act Against the Safety of Maritime Navigation and its Protocol, 1988 (SUA, 1988)

INTERNATIONAL MARITIME LABOUR CONVENTIONS FOR WHICH THE INTERNATIONAL LABOUR ORGANIZATION PERFORMS DEPOSITORY FUNCTIONS AND TO WHICH THE REPUBLIC OF CYPRUS IS A CONTRACTING PARTY

- Convention Fixing the Minimum Age for Admission of Young Persons to Employment as Trimmers or Stokers, 1921 (Convention No. 15)
- Medical Examination of Children and Young Persons Employed at Sea, 1992 (Convention No. 16)
- Convention Fixing the Minimum Age for the Admission of Children to Employment at Sea, Revised 1936 (Convention No. 58)
- Convention Concerning the Repatriation of Seamen, 1926 (Convention No. 23)
- Convention Concerning Crew Accommodation on Board Ships, Revised 1949 (Convention No. 92)
- Convention Concerning Minimum Standards in Merchant Ships, 1976 (Convention No. 147)

**CERTIFICATES OF COMPETENCY RECOGNIZED
BY THE GOVERNMENT OF THE REPUBLIC OF CYPRUS**

- | | |
|-------------------------|----------------------------|
| • Argentina | • Latvia |
| • Australia | • Liberia |
| • Belgium | • Malaysia |
| • Bulgaria | • Maldives |
| • Canada | • Myanmar (Burma) |
| • Chile | • Netherlands |
| • China (Hong Kong SAR) | • New Zealand |
| • Colombia | • Norway |
| • Croatia | • Pakistan |
| • Cuba | • Philippines |
| • Czech Republic | • Poland |
| • Denmark | • Portugal |
| • Egypt | • Republic of Ireland |
| • Finland | • Republic of Korea |
| • France | • Romania |
| • Germany | • Russia |
| • Greece | • Singapore |
| • Hungary | • Spain |
| • Iceland | • Sri Lanka |
| • India | • Sweden |
| • Indonesia | • Turkey |
| • Israel | • Ukraine |
| • Italy | • United Kingdom |
| • Japan | • United States of America |

NOTE: The certificates of competency issued by the former states of the USSR and Yugoslavia are also recognised.

RECENT LEGISLATION

1. The Merchant Shipping (Safe Manning, Hours of Work and Watch keeping) Law of 2000 (Law 105(I)/2000). (Gazette No. 3419, Supplement I (I), dated 14.7.2000).
2. The Merchant Shipping (Criminal and Disciplinary Liability of Seafarers, Suspension or Cancellation of Certificates) Law of 2000 (Law 106(I)/2000). (Gazette No. 3419, Supplement I (I), dated 14.7.2000).
3. The Merchant Shipping (Medical Examination of Seafarers and Issue of Certificates) Law of 2000 (Law 107(I)/2000). (Gazette No. 3419, Supplement I (I), dated 14.7.2000).
4. The Merchant Shipping (Registration of Seafarers and Seafarers' Register) Law of 2000 (Law 108(I)/2000). (Gazette No. 3419, Supplement I (I), dated 14.7.2000).
5. The Merchant Shipping (Issue and Recognition of Certificates and Marine Training) Law of 2000 (Law 109(I)/2000). (Gazette No. 3419, Supplement I (I), dated 14.7.2000).
6. The Control of State Aid Law of 2001 (Law 30(I)/2001). (Gazette No. 3481, Supplement I(I), dated 16.3.2001).
 - (a) The Control of State Aid (Amendment) Law of 2001 (Law 122(I)/2001). (Gazette No. 3518, Supplement I (I), dated 27.07.2001).
 - (b) The Control of State Aid (Amendment) Law of 2002 (Law 139(I)/ 2002). (Gazette No. 3624, Supplement I (I), dated 19.07.2002).
 - (c) The Control of State Aid (Amendment) Law of 2003 (Law 10(I)/ 2003). (Gazette No. 3679, Supplement I (I), dated 31.01.2003).
7. The Merchant Shipping (Recognition and Authorization of Organizations) Law of 2001 (Law 46(I)/2001). (Gazette No. 3487, Supplement I (I), dated 6.4.2001). (*Not yet in force*)
8. The Merchant Shipping (Port State Control) Law of 2001 (Law 47(I)/2001). (Gazette No. 3487, Supplement I (I), dated 6.4.2001). (*Not yet in force*)
9. The Merchant Shipping (Marine Equipment) Law of 2002 (Law 55(I)/2002) (Gazette No.3608, Supplement I (I), dated 31.05.2002). (*Not yet in force*)
10. The Merchant Shipping (Harmonised Safety Regime for Fishing Vessels of 24 Metres in Length and Over) Law of 2002 (Law 56(I)/2002) (Gazette No. 3608, Supplement I (I), dated 31.05.2002). (*Not yet in force*)
11. The Merchant Shipping (Registration of Persons Sailing on Board Passenger Ships) Law of 2002 (Law 57(I)/2002). (Gazette No.3608, Supplement I (I) percent, dated 31.05.2002). (*Not yet in force*)
12. The Merchant Shipping (Safety Rules and Standards for Passenger Ships) Law of 2002 (Law 58(I)/2002). (Gazette No.3608, Supplement I (II), dated 31.05.2002.) (*Not yet in force*)
13. The Merchant Shipping (Mandatory Surveys for the Safe Operation of Regular Ro-Ro Ferry and High Speed Passenger Craft Services) Law of 2002 (Law 59(I)/2002). (Gazette No. 3608, Supplement I (I), dated 31.05.2002.) (*Not yet in force*)
14. The Radio communications Law of 2002 (Law 146(I) / 2002). (Gazette No.3626, Supplement I (I), dated 26.07.2002)
 - (a) The Radio communications (Amendment) Law of 2003 (Law 15(I)/2003) (Gazette No.3679, Supplement I (I), dated 31.01.2003).
 - (i) The Radio communications (Tendering Procedures and Negotiations) Regulations of 2002. (Gazette No.3629, Supplement III (I), dated 09.08.2002, P.I. No. 382/2002).
 - (ii) The Radio communications (Individual Licenses) Regulations of 2003. (Gazette No.3679, Supplement III (I), dated 31.01.2003, P.I. No. 77/2003).
 - (iii) The Radio communications (Radio equipment) Regulations of 2003. (Gazette No.3679, Supplement III (I), dated 31.01.2003, P.I. No. 78/2003).
 - (iv) The Radio communications (Fees) Regulations of 2003. (Gazette No.3679, Supplement III (I), dated 31.01.2003, P.I. No. 79/2003).

(v) The Radio communications (General Authorisations) Regulations of 2003. (Gazette No.3679, Supplement III (I), dated 31.01.2003, P.I. No. 80/2003).

(vi) The Radio communications (Tendering Procedures and Negotiations) (Amendment) Regulations of 2003. (Gazette No.3679, Supplement III (I), dated 31.01.2003, P.I. No. 81/2003).

15. The Merchant Shipping (Minimum Safety and Health Requirements for Work on Board Fishing Vessels) Law of 2002 (Law 160(I) 2002).(Gazette No. 3629, Supplement I(I), dated 09.08.2002.)

16. The Merchant Shipping (Minimum Requirements of Medical Treatment on Board Ships) Law of 2002 (Law 175(I)/2002). (Gazette No.3638, Supplement I (I),dated 27.09.2002).

PANAMA – A CASE STUDY

Arnulfo Franco¹

ABSTRACT

The Panamanian Register has a very long history. It was established in 1925 and the users were primarily shipowners of non-fishing vessels. Nevertheless, it came to have an important fishing fleet until 1998, when the State took different decisions, including requiring a fishing license to be obtained prior to registration of a fishing vessel in the Merchant Marine. As a consequence, many vessels left and others were removed from the Register.

Since 2001, measures have been established to prevent illegal, unreported and unregulated (IUU) fishing vessels from being entered into the Register and, at the same time, to control fishing capacity in the specific case of longliners. Nowadays, Panama is developing some measures that take into account the problem of illegal fishing and the problem of vessels that belong to the Panamanian Register and do not comply with the corresponding regulations.

INTRODUCTION

A historical review of the operation of the Panamanian ships register, especially in relation to fishing vessels, shows the efforts that Panama has undertaken in order to achieve, as flag State, the implementation of the conservation and management measures of the different regional and subregional fisheries organizations. These measures have economic relevance for the country. Panama has taken the decision to promote an open register, with the objective, *inter-alia*, of implementing international agreements related to security, labour issues, granting of professional titles, and resource conservation. It has allowed the development of appropriate rules for fishing vessels registration, keeping in mind, for the future, the necessity of adapting the legislation and defining actions according to the changes in fishing and marine living resources conservation.

HISTORY OF THE PANAMANIAN FLAG FISHING VESSELS REGISTER

During the 1960s and 1970s, the quantity of longliners registered in Panama increased. Tuna longline fishing increased dramatically, first in Japan and then in Korea and Taiwan. Some countries fixed a limit to the fishing licences and only admitted the entry of a new vessel if another one left the fishery. This situation, coupled with advantages of registering in Panama, such as the absence of national restrictions with respect to the crew, the absence of taxes and the possibility of avoiding insurance requirements, caused a majority of these vessels to move to the Panamanian open register. During these years and later on, it was certainly not known what type of fishing vessels were registered, and in many cases the fishing area or species fished was not known.

In the period 1980-1989 regional fisheries management organizations adopted a set of management measures. The vessels continued to be registered in Panama, but with the objective of avoiding these measures, principally those of the International Commission for the Conservation of Atlantic Tuna (ICCAT). What most of the vessels did was to constantly change their flags; some of the vessels had two flags and the majority of them had a Panamanian flag.

The registration numbers and the vessel names were not clearly identifiable. Because the largest number of vessels flew the Panamanian flag, all the unidentified vessels seemed to belong to

¹ General Division of Marine and Coastal Resources, Panama.

Panama and unfortunately the Panamanian register became a synonym for a "Flag of Convenience" for illegal fishing.

Between 1990 and 1995, the quantity of the old Japanese and Korean longliners registered in Panama decreased; it was not easy for them to support their tuna fishing costs. During that time, the Taiwanese vessels turned to the use of open register flags, especially the Panamanian flag.

The activity of open register vessels in the Mediterranean soon became a problem, and in 1992 ICCAT had officially informed Panama of the Panamanian-flagged vessels that were fishing against conservation and management measures.

During that period, regional fisheries organizations implemented new international regulations relating to the catch of some species. In 1994 ICCAT recommended a restriction of the bluefin tuna (*Thunnus thynnus*) catches in the Atlantic Sea, and officially established the Bluefin Tuna Statistical Document Programme.

In 1995 ICCAT notified Panama, Honduras and Belize, with respect to their flag vessels, of fishing practices which were identified as being in contravention of the management measures.

Between 1996 and 2000, the international community criticized strongly the activities of the fishing fleet registered in Panama. The Consular and Vessels Division approved the bluefin tuna statistical document and the Consul of Panama in the Canary Islands was authorized to sign it.

At the end of 1997 the obligation to obtain a fishing licence prior to registration in the Merchant Marine Register was established. Many vessels that did not apply to obtain the fishing licence were cancelled from the Register. Fishing of bluefin tuna and northern or southern Atlantic albacore tuna (*Thunnus alalunga*) was not authorized; fishing in the Mediterranean waters was not authorized.

In 1998 Panama became Contracting Party to ICCAT (Law N° 74 November 10th 1998) and since 1999, a VMS system is required in order to obtain a fishing license. The ICCAT Port Inspection Scheme has subsequently been adopted.

In 1998 by Law Decree N° 7, February 7th 1998, an institution called the Panama Marine Authority (PMA) was created; this Authority executes all the Panamanian marine sector competence. Under this new organic structure are: the Division of Merchant Marine, in charge of the vessels register (hereafter the Consular and Vessels Division, which had been operating under the Financial and Treasury Ministry); the General Division of Marine and Coastal Resources, in charge of fishing affairs (hereafter the General Division of Marine and Coastal Resources, which had been operating under the Commerce and Industries Ministry); the General Division of Ports and Auxiliary Marinas Industries, a partly autonomous entity (hereafter the National Port Authority); and the General Division of Seamen.

It was hoped that under the same administrative scheme, PMA, the marine sector development could be strengthened; in practice a defined policy in relation to fishing vessels had not existed.

In 1998 the Law N° 75, November 10th, ratified the Agreement on the International Programme for Dolphin Conservation.

In 1999 Panama achieved the removal of commercial sanctions imposed since 1998 by ICCAT members States, banning the tuna imports from vessels flying the Panamanian flag.

According to the Executive Decree N° 90, July 17th 2002, industrial fishing vessels of internal and international service, with a Panamanian flag, are not allowed to use gill and/or drift nets.

PANAMANIAN FLAG VESSELS REGISTER POLICIES

The Merchant Marine is in charge of the vessels register, including fishing vessels. There are two divisions in the register, the internal service vessels and the foreign service vessels. The first ones are called domestic; these vessels have fulfilled the requirement of nationalization through the payment of taxes for entering the country. In general these vessels fish in Panamanian jurisdictional waters. The foreign service vessels are all those vessels registered in the Panama Register and seek registration because of the benefits that they obtain. These represent the majority of the vessels registered in Panama Register. The conditions and benefits for international service vessels are the same for Panamanian and non-Panamanian owners.

Some of the requirements for vessel registration in the Merchant Marine Register are:

- to prove vessel ownership, an authenticated contract of purchase and sale, shipbuilder certificate if the vessel has just been built, or a document to accredit the judicial sale, as appropriate;
- power of attorney to a Panamanian lawyer for legal representation of the vessel before the General Division of Merchant Marine;
- cancellation certificate from the previous register issued by the relevant authorities;
- technical certificates issued by organizations acceptable to the Panamanian Marine Administration;
- additionally, all vessels of 20 or more years must be inspected in accordance with regulations before obtaining the license.

FISHING VESSELS REGISTRATION POLICIES

The fishing vessels registration policies appeared in 1996, when the authorities decided to provide a grant, before the vessel was registered. The Finance and Treasury Minister, through the Consular and Vessels General Division and the Commerce and Industries Minister, through the General Division of Marine Resources took part in that agreement. (As noted above, Panama attended an ICCAT meeting in 1996 for the first time, and became a Contracting Party in 1998.)

Between 1995 and 1997 there was no specific policy about when the consent had to be given, it was only a requirement. However, an important principle was established: the need for two institutions with opposite objectives to consult. With the authorization of the entity responsible for fisheries, the corresponding navigation licence was issued.

In 1997 with the Executive Decree N° 49, November 10th, the International Fishing Licence was established. It is issued by the General Division of Marine and Coastal Resources and the vessel is registered in the Register of the General Division of Merchant Marine. This is the first step on policies for the fishing register, and the establishment of specific requirements for the fishing vessel to be registered in the Merchant Marine.

In 1998, when Law Decree N° 7 created the Maritime Authority, both divisions became part of the same institution. Since then, the Board of Directors of the Maritime Authority became concerned with the development policies of the maritime sector and the policies of vessel registration. The good communication between the two departments allowed a cleanup of the registered fishing vessels on the register, but this has not been finished yet. For example in 2003, 220 fishing vessels are registered in the Merchant Marine Register and only 124 of them have obtained an international fishing licence.

At this point there is a problem: first the fishing vessels obtain an international fishing licence (which have a one year period of validity, required by Decree), then these vessels obtain the permanent navigation licence (Merchant Marine registration, a four year period of validity, created by

law). Some of the vessels do not renew the fishing license but because the navigation license is still valid, they maintain the Panamanian flag.

In addition, the law requires the registration of the vessel mortgage in the National Public Register, as well as the discharge of the mortgage before leaving the National Registry. In this way, it is very difficult to remove a vessel from the register if the mortgage is not paid off.

In the past, fishing vessels have been eliminated from the register at the request of the Division of Marine and Coastal Resources. Nowadays, in order to clear the register, the Division of Merchant Marine is directly cancelling the fishing vessel registrations when the period of validity of the international fishing licence has expired.

Recently, a National Maritime Strategy has been elaborated. It is defined as "the set of policies, plans, programs and outlines, coherently adopted by Panama State, in order to promote the maritime sector development". The Strategy is a mandate addressed by Article 311 of the National Constitution, and requires that all the maritime sector institutions be part of it. The maritime sector is defined as "all the activities related to the merchant marine, port system, coastal and marine resources, human resources and auxiliary maritime industries".

One of the Strategy objectives is related to the fishing vessels register, and, *inter alia*, it establishes the need for developing a plan to prevent, deter and eliminate IUU fishing. This document also addresses the need for implementing a programme to train people in relation to fishing and to grant professional titles. The main components of the programme are conservation, sustainable use of marine resources and the life security at the sea, in order to support the new country paradigms of responsible fishing and integrated management of coastal resources.

The objective of both the Panamanian register (Law 8 of 12 January 1925) and the fishing vessels register, has been to add vessels to the register. However, since 1996, when the country started to participate in different regional fisheries organizations and to maintain catch statistical documentation, the objective of the Division of Marine Resources has been to keep an international fishing fleet that allowed Panama to register historical catches, and consequently, to be able to demand a larger part of the fishing quota distribution. This new focus has two objectives: to keep an important number of vessels that would receive the established fishing quota and to sustain historical fishing capacity, in order to the further national fleet development.

As noted above, there are two different registries of vessels within the General Division of Merchant Marine: there is a register for foreign service vessels and a register for internal service vessels. The former are dedicated to international fishing, the others operate exclusively in Panamanian waters. Vessels that fish in international waters have a hull or structure made up of wood, iron, steel or any other material; they usually carry out fishing activities outside the Panamanian waters or between the Panamanian waters and the international ones.

The substantial differences between the foreign service vessels and those of internal service, are the requirements relating to security, pollution, labour, titles and others derived from the IMO and other international organization agreements. Nevertheless, many of these requirements are applied to vessels of more than 500 GT vessels, and the majority of fishing vessels are under this range.

On the other hand, there are different control systems applicable to the fishing vessels, which are different according to the two different fleets. It is in relation to the inspections carried on by the General Division of Merchant Marine, which are more severe with the foreign service vessels. Nevertheless, the General Division of Marine and Coastal Resources carries out security inspections of the vessels that fish in national waters every six months.

Both the international service fishing vessels and the merchant vessels are subject to inspections relating to life and security at sea, cargo, prevention of contamination of the marine

environment, minimal crew numbers. Additionally, The Health Ministry is responsible for compliance with HACCP requirements, when required by the importer country.

There is no difference between shipowners of international service fishing vessels and national vessels shipowners. A national shipowner, living in the country, with a shipping or merchant vessel, registered as a foreign service vessel, has to comply with the same requirements and has the same advantages as the shipowners of other nationalities.

A relevant issue of the MAP policies is that they take into consideration the flag State responsibilities. That is to say that when granting a fishing license they take into account the fishing capacity of the relevant area and if the vessels will comply with the existing regulations, which is extremely important.

The grant of international fishing licences presents a relevant problem to the General Division of Marine and Coastal Resources. There is not enough information about the rules of the various regional fisheries organizations, and there is not a reference "white list" of fishing vessels. In its experience, the General Division of Marine and Coastal Resources considers "black lists" to be of great value. These lists are published without prior consultation with the governments, and do not take into account any comments from them. That is why it is possible to have a "black list" that identifies IUU fishing vessels but not the flags they are flying, nor the explanations or evidence presented by the flag countries in relation to the measures that have been taken against the vessel. The existence of registered vessels identified as IUU fishing vessels concerns Panama. Panama considers that because of its recent history, it has a bad reputation, despite its efforts to ensure compliance by the international fishing register with existing conservation and management measures.

On the other hand, they believe that it would be easier to control and to catch IUU fishing vessels if the Panamanian authorities knew the flag State rules of every vessel and if there was an international port and transshipping control schedule to be complied with.

Another problem is related to the transshipping vessels; nowadays these vessels are considered as freighters and there are no procedures for effective control of the landings of products transhipped from IUU fishing vessels.

Panama has made efforts to adopt the internationally acknowledged rules of ship's bearing, such as the FAO Uniform Specifications for the fishing ship's position and vessel identification. Resolution 1791, 2001 focuses on this issue, as does the National Maritime Strategy. Moreover, support vessels or freighters that tranship at high sea, must have a VMS system compatible with the General Division of Marine and Coastal Resources, and they must also inform date and place of transshipping, species, vessel from which the transshipping is being done and the port of landing. Although in practice it has been very difficult to support these requirements, the General Division of Merchant Marine needs the consent of the General Division of Marine and Coastal Resources in order to grant a shipping license to this kind of vessel.

The flag policy of the fishing vessels is not frequently reviewed. Its objectives include registering the vessel, entering into the fisheries under the management of different fisheries organizations and complying with the corresponding conservation and management measures. The effective fulfilment of the obligations as flag state is the final goal of the vessels register, for both fishing vessels and merchant vessels.

VESSEL REGISTRIES

The Panamanian Register is located in Panama city. It was established in 1925. The Merchant Marine has private consuls over the world. They may be delegated to put into effect actions in relation to the vessels' provisional register, according to conditions and limitations fixed in the

particular delegation. The Merchant Marine also has Regional Offices with control and maritime security inspection functions, inspections relative to conditions of seamen and a Security Office in New York, which makes plans, organises, manages, co-ordinates and executes functions of the Merchant Marine, the fulfilment of international agreements and the supervision of the security inspections.

Through the so called Tripartite Commission, composed of the National General Under-Comptroller, the Merchant Marine General Director and the Vice Minister of Foreign Affairs, inter-institutional consultations about the vessels register take place. The functions of the Tripartite Commission are related more to the budgetary issues and consuls' expenditures than to administration of the register.

Even though the General Division of Marine and Coastal Resources and the General Division of Merchant Marine, in charge of the fishing vessels register, are under the same institution, there is no policy orientated to achieve synergy to comply with the fishing vessels register regulation. National and international fishing is not as important compared with other activities of the maritime sector, such as the vessels registration and ports. This situation, together with the bureaucracy, has obstructed the establishment of new rules and regulations for fishing and national and international service fishing vessels register.

MERCHANT MARINE VESSEL REGISTRATION PROCEDURE

A vessel registration request may be submitted to a Panamanian Consulate or to the General Division of Merchant Marine through a local lawyer.

To request and register a temporary permit, permanent permits and radio licences, the following documents are required (with a notary's certificate, authenticated by a Panamanian consul):

- a complete vessel description (present and previous name, previous nationality and kind of vessel service; name and address of the shipowner, name and address of the shiptenant, shipyard, year and place of shipbuilding, shipbuilder name and address, measures: tonnage, type, HP, type and number of cylinders and vessel speed; classification entity; responsible authority for radio function; IMO number; ISM code for vessels greater than 500 tons); and international fishing license in the case of fishing vessels.
- international Tonnage Certificate (security and technical) in accordance with the SOLAS Agreement;
- proof of ownership;
- power of attorney to the lawyer or local firm;
- certificate of deletion from previous register.

The vessel registration may be provisional (Law 19, August 3rd 1992). It has a duration of 3 months, and after this period the registration becomes legally cancelled. This special registration is conceded only to international service vessels destined to be breaking up, delivery trips or any other kind of temporary navigation. The vessel receives a navigation provisional licence and a radio permission for the period of registration.

The provisional navigation licences allow the shipowner to obtain and present the needed documents in order to obtain the permanent registration or permanent navigation licence (they have 6 months to complete the formalities). When the vessel obtains a permanent registration, the navigation licence is valid for four years, as is the radio licence. The navigation licence may be renewed for similar periods, but it has to fulfil the law and regulations that apply to the register and be up to date with register fees and tax payments.

When the consul has received the request, he sends a fax to the General Division of Merchant Marine in Panama, asking authorization to proceed with the vessel provisional registration. He is notified by fax and the vessel receives the letters of the code to use the radio.

A vessel is not authorized to fish by a provisional licence. The provisional licences for fishing vessels have to be authorized by the General Division of Marine and Coastal Resources and the vessel is allowed to go from one port to another only, to be repaired or for sale.

VESSEL REGISTRATION TAX AND COSTS

Document rights paid for the foreign service vessels registration in the Merchant Marine Register are as follows.

- Vessels up to 2 000 GT, US\$500.
- Vessels from 2 001 to 5 000 GT, US\$2 000.
- Vessels from 5 001 to 15 000 GT, US\$3 000.
- Vessels greater than 15 000 GT, US\$3 000 plus an annual tax of US\$0.10/each GT fraction above 15 000 GT, with a total maximum of US\$6 500.
- All vessels of the foreign service register pay an annual tax of US\$0.10/NT or fraction thereof.

Fishing vessels registered in the Panama Merchant Marine Register

YEAR	TOTAL	FOREIGN	INTERNAL	YEAR	TOTAL	FOREIGN	INTERNAL	YEAR	TOTAL	FOREIGN	INTERNAL	INTERNAL
1970	259	77	182	1982	823	432	391	1994	1544	932	612	
1971	288	95	193	1983	906	495	411	1995	1573	928	645	
1972	308	104	204	1984	965	546	419	1996	1566	907	659	
1973	355	134	221	1985	1024	588	436	1997	1217	543	674	
1974	434	186	248	1986	1125	628	497	1998	1090	399	674	130
1975	466	200	266	1987	1220	703	517	1999	925	220	705	120
1976	522	234	288	1988	1289	765	524	2000	922	201	721	135
1977	575	258	317	1989	1399	857	542	2001	953	217	736	103
1978	622	291	331	1990	1449	892	557	2002	981	231	750	134
1979	684	327	357	1991	1487	923	564	2003	973	220	753	124
1980	734	365	369	1992	1529	939	590					
1981	773	392	381	1993	1547	944	603					

Consular annual tax:

- Maritime commerce, passengers and fishing vessels, dredges, drillings; transshipping; freights, tugboats: 1 000 GT or less US\$1 200; 1 000 – 3 000 GT US\$1 800; 3 000 – 5 000 GT US\$2 000; 5 000 – 15 000 GT US\$27 000; greater than 15 000GT US\$30 000.
- Non-self propelling vessels, vessels for scientific activities, submarine providers, exploration, floating docks and in general no commercial vessels: 500 GT or less US\$850; 500 – 1 000 GT, US\$1 400; greater than 1 000 GT, \$1 800.
- sporting and personal use vessels: 100 GT or less US\$1 000; greater than 100 GT US\$1 500.

Annual inspection rate:

- Passenger vessels: 1 600 GT or less, US\$900; greater than 1 600 GT, US\$1 800.

- tank vessels: 500 GT or less, US\$500; 500 – 1 600 GT, US\$750; 1 600 – 15 000 GT, US\$1 000.
- Cargo vessels: 500 GT or less, US\$500; 500 – 1 600 GT, US\$750; 1 600 – 5 000 GT, US\$850; 5 000 – 15 000 GT US\$1 000; greater than 15 000 GT, US\$1 200.
- Pleasure vessels: US\$400.
- Drilling vessels: US\$1 300.
- Other vessels: 500 GT or less, US\$500; 500–5 000 GT, US\$800; greater than 5 000 GT, US\$1 000.

Annual rate for responsibilities relating to marine activities and for Panama's participation in international conferences and meetings:

- Tank vessels, drilling rigs, passengers vessels, chemical transport vessels: US\$850.
- Others: 500GT or less US\$300; 500–10 000 GT, US\$400; greater than 10 000 GT, US\$500;
- All vessels pay US\$0.03 NT.

The General Division of Merchant Marine annually collects an average of US\$55 million including the money collected by the General Division of Mariners which is directly related to the activities of the Vessels Register. The estimation of an annual average vessel payment is US\$5 000, and the fishing vessels pay an annual average of US\$3 500. The fishing vessels as a whole represent approximately 1.4 percent of the total Merchant Marine revenue. In 2003, fishing vessels have paid US\$390 000 to the General Division of Marine and Coastal Resources for international fishing licences, with an average of US\$3 000 per vessel.

Though there is not a study on the issue it is considered that the activities involved in the vessel registration generate about US\$25 to 30 million to Panamanian companies in the context of lawyers, notaries, translators and register activities and an additional US\$50 million in vessel services outside the country.

BENEFITS FOR PANAMANIAN REGISTERED VESSELS

The General Division of Merchant Marine recognises the following advantages for Panamanian registered vessels.

- All physical or juridical persons with independent nationality and place of origin, are allowed to register their vessels under the Panamanian flag.
- There is not a minimum tonnage established and any size, type or age may be registered.
- The vessel registration is a very simple process, as well as the registration of a vessel mortgage in the provisional register with a six month validity. It is possible to accede to the register through lawyers or through the Panamanian merchant marine consuls, in the principal ports world-wide.
- Specialised Maritime Courts are ready for service within 24 hours. These Courts have experience and efficiently manage complex maritime controversies about vessels, and labour issues that involve sailors in all ports all over the world.
- Fiscal incentives are offered to vessels of old and new construction, that apply for registration.
- The incomes of international commerce vessels activities, fishing included, are free tax.
- Panama is proud of its standard of environmental and security rules.

**Number and characteristics of Panamanian registered vessels,
Merchant Marine Foreign Service, January – June 2003***

CLASSIFICATION VESSEL TYPE	No.Vessels	Gross Tons
COMMERCIAL – TOTAL	7 315	142 564 610
Freighter	5 515	98 695 342
Freight and passengers	40	371 464
Passenger	223	2 011 976
Cargo containers	37	700 931
Tank vessels	1 500	40 784 897
MISCELLANEOUS ACTIVITIES – TOTAL	2 947	5 400 142
Provisioning	232	162 201
Barges	408	1 820 549
Dredge	50	105 354
Excavator	2	1 147
Crane	24	33 451
Explorers	2	10 914
Giabarra	12	198 802
Crane	45	54 345
Drill	187	2 219 619
Fishing	220	117 617
Pontoon dock	13	31 454
Howling	461	182 174
Crew**	100	10 698
Yacht	1 058	105 929
Not specified	133	345 888
GRAND TOTAL	10 262	147 964 752

**Number and characteristics of Panamanian registered vessels,
Merchant Marine Internal Service, January – June 2003***

CLASSIFICATION VESSEL TYPE	No.Vessels	Gross Tons
COMMERCIAL	273	23 487
Freighter	127	14 705
Freight and passengers	24	1 168
Passengers	119	2 837
Tank vessels	3	4 777
MISCELLANEOUS ACTIVITIES	1 023	86 558
Provisioning	19	236
Lighters	64	23 425
Dredge	5	6 435
Excavator	2	436
Crane	5	4 587
Barge	11	463
Drilling	2	1 534
Fishing	753	36 589
Howling	45	8 892
Crew**	49	1 246
Yacht	20	364
Not Specified	98	2 351
GRAND TOTAL	1 346	110 045

* Source: Merchant Marine General Division, General Statistics Department. Preliminary numbers.

**Vessels transporting workers from one place to another.

FISHING VESSEL REGISTER PROCEDURE

There is no definition for "fishing vessel" in national legislation. There is a definition to categorise different fisheries activities. In practice, the usual definitions are those included in international regulations, and in one specific case, related to support vessels, the definitions have been taken from an ICCAT resolution.

The applications for vessel registration have to be made in the following way: in the case of fishing vessels, to obtain a license, the proper information must be presented. However it is possible to obtain a provisional navigation licence, valid for six months, but it is recorded in the licence that the vessel cannot undertake fishing activities. It is also possible to charter a vessel to other countries' registries with similar legislation (Law 83, 1976). In this case the vessel keeps the Panamanian register and changes its flag for the register flag of the country where the vessel was chartered.

The fishing license has a value of US\$3 000 for vessels smaller than 2 000 GT and US\$50 000 for vessels bigger than 2000 GT.

Decree N°49, November 1997, established the requirement to obtain a fishing license, called an International Fishing License, before obtaining a fishing vessel register. The information required is in accordance with the 1993 FAO Compliance Agreement.

In order to obtain a fishing licence, the vessel's representatives, lawyers established in Panama, have to present the ownership power of attorney and the application, which is then analysed by the General Division of Marine and Coastal Resources. The application has to contain information about fishing area (co-ordinates), fishing method, species, vessel name, IMO number, fisheries organization of the fishing area, EEZ fishing license (if applicable), vessel measurements, hold size included and previous vessel name (previous navigation patent). That information is used to check if the vessels are included in a "black list", the origin of the vessels, if these vessels belong to other registries and, when necessary, the authorities of the vessels' previous flag State are asked about the relevant vessels. If everything is correct and there are no problems with the fishing quota, the license application approval is notified. In addition three vessel photos, from different visual angles, one of them showing the vessel name, are required. Information relating to the last six months of catches is required, as well as the installation of a satellite monitoring system. When these requirements are fulfilled, the fishing vessel license is issued and it is then allowed to apply for a vessel registration. In this case the requirements are the same as for non shipping vessels.

Obtaining the fishing licence is the most difficult step of the registration process. To obtain a fishing licence for the first time requires fifteen days to a month. There are easy cases, especially when the vessel is included in a white list or in cases of licence renewal. The Merchant Marine registration takes almost three days.

The provisional register only applies in case of a vessel moving from one place to another, without fishing. The General Division of the Marine and Coastal Resources sends to the Merchant Marine a "no objection" note and asks for the registration under the explicit prohibition of fishing. The same procedure is applicable to provisional fishing licences. No other inspection is required for this kind of register.

Causes and conditions to remove a vessel from the register, not to renew or to remove the fishing license vessel are established by Executive Decree 49, 1997. They are the following:

- The proven violation of conservation and management measures of regional and subregional fisheries management organizations.
- Unauthorized fishing in any country's EEZ.
- The failure to execute Merchant Marine General Division rules and regulations.

- When the requirements settled by the Industry and Commerce Ministry in order to obtain an international fishing license come to an end.
- When the international fishing license has been obtained through fraud or untrue information.
- The non-fulfilment of Decree 49 (November 1997) dispositions.
- On the other hand, AR N°1791, 2001, points out the reasons to cancel the international fishing license. They are:
 - fishing in prohibited areas or with prohibited gear;
 - vessel position signal missing for more than five days on the General Division of Maritime and Coastal Resources monitor;
 - no timely reception of fishing information;
 - no maintenance of fishing logbook on board;
 - no payment of imposed sanctions;
 - IUU vessel identification;
 - proved violation of regional and subregional organization management and conservation measures;
 - failure to fulfil General Division of Merchant Marine rules and regulations;
 - when the conditions to obtain an international fishing licence from the Industries and Commerce Ministry come to an end;
 - when the international fishing license has been obtained through fraud or untrue information;
 - failure to fulfil the conditions established in the Executive Decree N°49, 1997.

The Law N°2, 1980, Article 9 indicates that a vessel National Merchant Marine registration may be cancelled officially:

- when the vessel serves a country in war with Panama Republic;
- when the vessel is registered in another country Merchant Marine Register;
- when the vessel is used in smuggling, illegal commerce or piracy activities;
- in cases of unfulfilment of rules related to navigability, safety, hygiene, labour rules and prevention of environmental pollution;
- in cases of non-compliance with international agreements ratified by Panama, or resolutions of the competent United Nations Organizations;
- when the Navigation Licence has expired and has not been opportunely renewed;
- in other cases established by law.

FLAG STATE CONTROL EXERCISE OVER FISHING VESSELS

It is a tendency for shipowners that do not wish to comply with the law to deregister their vessels and look for another register with benefits, which implement the regional fisheries organizations' rules. At the beginning of the fishing licence system, many vessels did not comply with the established conditions. Licences were cancelled and the General Division of Merchant Marine was asked to eliminate these vessels of the register. Consequently, the shipowners looked for other kind of registries. The change was so notorious that the shipowners started to seek participation in the meetings of fisheries organizations, to which Panama belongs, and they even started to encourage the government to become a member of all those organizations.

The vessels registered during recent years have been Taiwanese longliners, fishing in the Pacific Ocean and landing their products in the fishing port of Vacamonte. Some of them went to the Caribbean in 2003.

The fishing licence and consequently the registration on the Merchant Marine Register are denied under the circumstances required by regulation and under other circumstances deduced from the fishing license application analysis. But the simple fact of missing the satellite signal, which indicates that a VMS has been installed in the vessel as required, is a sufficient reason for denying the fishing vessel a licence.

Some of the grounds for denying a fishing license are:

- the use of long drift nets;
- fishing in the Mediterranean Sea;
- toothfish fishing or fishing in CCAMLR area;
- if the requested fishing coordinates belong to a country's EEZ and the vessel has not been issued a license by that country;
- if the country has not requested species fishing quota;
- if the vessel is included in a "black list" or, in case of purse seiners fishing in the Eastern Pacific Ocean which are not included in the regional list;
- when they do not belong to the competent fishing regional organization, unless the vessel has a historical performance within that organization under the Panamanian flag.

When the vessel has a fishing license that allows it to fish in another EEZ, the authority that granted the license is asked for advice. In this sense, there were no faults.

There is no MCS, though the General Division of Marine and Coastal Resources has recently requested to be part of the International Network for Fisheries Monitoring, Control and Surveillance. In fact this organization has communicated to Panama information concerning the results of the meetings that have been taken place, though this is not an official communication.

It is quite difficult to try to determine the income of the fishing vessel's shipowners, operators or representatives. The Panamanian representative – generally lawyers who are expert in maritime issues- deal more with merchant vessel registration than with fishing vessel registration. As a matter of fact, the number of registered vessels of foreign service is becoming smaller and smaller, most of them (56 percent) leave the Panamanian ports, which means that the economic activity associated with these vessels is different from some years ago. There are no taxes for the internal and foreign vessels fishing, but there are taxes for the processing and fisheries processing plants in Panama. The fishing vessels do not receive subsidies, though the shipbuilders, according to rules of the shipowners nationality, may receive some kind of subsidies.

The General Division of Merchant Marine, as requested by the General Division of Marine and Coastal Resources, has started to cancel the registration of fishing vessels that haven't renewed or obtained an international fishing license. Law N°2, 1980, established that it is possible to cancel a vessel's registration when it did not comply with international agreements that Panama has ratified. In general the General Division of Merchant Marine has performed in that way. The General Division of Merchant Marine may also deny a registration application when, in its opinion, the application is against the national interests; it is used in cases where the General Division of Marine and Coastal Resources does not agree to concede a provisional license.

FISHING AUTHORIZATIONS

There is much control and investigation involved in approving an international fishing license. When the General Division of Marine and Coastal Resources receives an application, all the information is analysed, in accordance with the Executive Decree, which requires a withdrawal of the fishing authorization if the information is false. But it is also necessary to do that to adjust the application to the fishing reality. Experience shows that sometimes people ask for licenses with gear

that should not be used for the species they have to fish, or they use a license to fish species in areas in which there are not such species, or they even use licenses to fish species on the high seas where those species cannot be fished. It is also verified that the vessel is not included in a "black list" and that it is not registered in a register which has been the subject of sanctions by a regional fisheries organization. Then, the species are verified within the corresponding fisheries organization, and it is verified if there is a fishing quota belonging to that vessel, as well. If the vessel is going to fish in the EEZ of a coastal State, a license officially translated and certified by a notary is requested.

The following vessel information and documentation is required:

- previous licence or registered copy;
- IMO number;
- last six month fishing logbook registries (for the first application);
- photo of the vessel from three angles, one of them must show the vessel name;
- VMS system compatible with that one used by the General Division of Marine and Coastal Resources installed;
- shipowner's name, address, phone, fax and e-mail;
- representative's name, address, fax, and e-mail;
- name, address, fax and e-mail of the legal representative in Panama, with authenticated power of attorney;
- hold capacity in m³;
- authenticated fishing licence, issued by the competent authority, when fishing is going on in another country's EEZ;
- regional fisheries organization of the selected fishing area;
- vessel tonnage certificate;
- ports where the vessel will land or tranship fishing products or vessels.

VESSEL PENALTIES WHEN THE REGISTER AND FISHING LICENCE TERMS ARE VIOLATED

There are two kinds of penalties, one of them is established in Article 297 of the Fiscal Code, ranging from US\$10 000 to US\$100 000 and in case of recidivism the vessel is confiscated. The other one, according to Executive Decree N°49, November 1997, is the removal of the fishing authorization. In a few cases there have been pecuniary penalties, especially because of the absence of statistical data, absence of satellite signal or license application when the fishing licence has expired. When the licence has expired, and when the vessel is included in a "black list" and this condition has been proved, the fishing license is removed and the vessel is withdrawn from the Register of the Merchant Marine.

There are problems in issues relating to the grant of fishing licenses and the control systems. After the analysis and the approval of the applications, it is easy to: verify the positions of the vessels and to check if there are vessels in the forbidden fishing areas, if there are vessels that have entered the EEZ of coastal countries illegally, including Panama's EEZ because the licenses do not allow the vessels to fish in this particular area; and to verify landing ports. Minimum size and species and gear control are the concerns in relation to implementation. The different controls help to improve the situation. In the case of the species known as "patudo" under ICCAT area, only the longliners that catch bigger sizes are admitted. As there is no quota for swordfish, the fishing of it species is not authorized, so the adopted measures in relation to size and catches come from experience developed in the process of license granting. There are problems with transshipment on the high seas; it is difficult to control. A licence for transshipment by fishing vessels has been proposed, as well as the use of the satellite monitoring system. But the problem is that these vessels escape from all the fishing

administration regulations and it is very difficult for the Divisions of Marine Resources and Merchant Marine to execute a real control over them. There are also: vessels fishing under another country's quota that have been contracted but not chartered to that country's enterprises; and chartered vessels, which have recently become subject to regulation by a regional fisheries organization. Finally, Panama is concerned with the granting of fishing licences to vessels that fish in a fisheries organization's area without having competence over the vessel's target species (for example deep waters species in tuna management organizations). The concern in this case is how the authorities could determine if a vessel is engaged in IUU fishing or not.

Controls are being applied to the fishing vessels, in accordance with international rules. Nevertheless, through the joint action of the community and the development of port inspection schemes, those controls may be improved. It is all about accomplishment of minimum size and fishing species rules. This is the weakness of open registries, because its control system operates over the information given by the vessel itself.

APPENDIX K

INTERNATIONAL NETWORK FOR THE COOPERATION AND COORDINATION OF FISHERIES-RELATED MONITORING, CONTROL AND SURVEILLANCE ACTIVITIESMichele Kuruc¹**ABSTRACT**

The International Monitoring, Control and Surveillance (MCS) Network offers another tool in the battle against IUU fishing. The Network consists of governmental MCS organizations and others that cooperate with each other and share information and experiences. Purposes of the Network include advancing MCS efficiencies, sharing training, building MCS capacity, and helping countries satisfy their national MCS responsibilities and international commitments. There are no costs to join or participate.

INTRODUCTION²

The world's oceans are abundant sources of food and wealth. However, wild capture fisheries resources are under increased pressure throughout the world. Most established fisheries are fully utilized and many have been depleted. Three-quarters of the world's fisheries are either fully exploited or over-exploited. Overfishing, unauthorized fishing and pollution are threats to sustainability. There is an increased recognition by fisheries agencies worldwide of the need to conserve existing fisheries, rebuild stocks where overfishing has occurred and to protect stocks and the marine environment from illegal, unregulated and unreported (IUU) fishing.

Marine fishing takes place inside coastal waters under the control of fishing States. It also occurs on the high seas and on stocks that straddle or migrate across boundaries. Many fish stocks are attractive to IUU fishers, who often have no long-term interest in the preservation of the resource.

All fisheries agencies have a common interest in developing the most cost-effective means of protecting their fisheries resources and regional interests. Investment in research and fisheries management will not be fully realized if measures cannot be implemented and enforced.

Recognizing that fisheries monitoring, control and surveillance professionals from different nations often do not know one another or cannot readily contact one another, and the essential need for such contacts to successfully pursue MCS activities, the need gave rise to the creation of the International Network for the Cooperation and Coordination of Fisheries Related Monitoring, Control, and Surveillance Activities (MCS Network).

BACKGROUND

There is interest in providing for the long term development of sustainable marine resources around the world, and the benefits derived from cooperation and coordination in fisheries-related monitoring, control and surveillance activities are well known. To this end, the country participants in the International Conference on Monitoring, Control and Fishing Surveillance (Santiago, Chile,

¹ Chair, MCS Network, Assistant General Counsel for Enforcement and Litigation, NOAA.

² The presentation on this subject given at the Expert Consultation highlights a few examples of actual cases and situations from the past, where the resources and contacts now available through the MCS Network could have made a real difference in handling the case, both in terms of outcomes and resources expended. This accompanying paper describes the MCS Network and complements the scenarios described in the presentation.

January 2000) indicated their intention to create an international network for the coordination of fisheries-related enforcement.

This intention from the Santiago Conference was translated into reality in Key Largo, Florida, in 2001, when the Executive Committee of the MCS Network was convened for the first time. The Committee was tasked with the creation, elaboration and implementation of an international network for coordination and cooperation in fisheries-related MCS.

Draft terms of reference were developed by Chile and these served as a starting point for the Committee in its Key Largo session. The current Terms of Reference were derived from the draft developed by Chile. The details of the operations of the MCS Network are outlined in the Technical Terms of Reference. The terms outline the MCS Network's objectives and functions, organization, protocol for information exchange and information requirements.

Executive Committee participants present in Key Largo included representatives from national organizations/institutions charged by their governments with responsibility for fisheries-related monitoring, control and surveillance. The Executive Committee countries that participated were Australia, Canada, Chile, Peru, and the United States of America. The European Commission was also represented. An FAO representative participated as an observer.

The Executive Committee discussed the need for a mechanism to foster enhanced cooperation and coordination on many levels including: basic, working-level contacts, coordination ability, experience exchanges, training, joint cooperation activities, and access to information among fisheries control professionals. Examples were shared on the benefits such cooperation and access have yielded as well as the frustrations and complications that can result when coordination and cooperation were lacking.

GOALS

The goal of the Network is to improve the efficiency and effectiveness of fisheries-related MCS activities through enhanced cooperation, coordination, information collection and exchange among national organizations and institutions responsible for fisheries-related MCS. The Network works to strengthen MCS capabilities in participating countries through coordination and cooperation with the goal of deterring, reducing, and eliminating IUU fishing and other harmful activities to living marine resources in the world's oceans. It is designed to support countries in their attempts to satisfy their obligations arising from international agreements and their national responsibilities in performing MCS functions.

While acknowledging a concentration on fishing, the Network takes a marine ecosystem-wide approach to its activities.

MEMBERSHIP

The MCS Network is a voluntary arrangement of national organizations and institutions in charge of fisheries-related MCS activities in their countries. These organizations and institutions are interested in coordinating and cooperating in order to deter and eliminate IUU fishing and strengthen their MCS programs.

Membership is voluntary. Taking into account the many different national situations and organizational configurations, the Network has determined that each country is in the best position to determine the level of participation that is appropriate. Each member may participate within the limits of its current resources, and is encouraged to participate further as resources are available. The Network respects the varying laws, regulations or restrictions each country places on sharing various types of information and confidentiality.

Special account is taken of the needs of developing countries, whose participation in combating IUU fishing is critical.

The Network, like MCS activity, involves multiple disciplines—investigators, agents, inspectors, attorneys, prosecutors, biologists, foreign affairs specialists, and others. All contribute to successfully resolving MCS matters.

Given the sensitive nature of MCS information, those outside of government cannot have full access to all Network information. However, the Network has recognized the value those outside government can often contribute. An appropriate category of membership for such interested entities and individuals is under consideration.

COSTS

Membership is free. No costs are associated with joining or participating, other than travel to meetings.

OPERATION

The details of the operations of MCS Network are outlined in the Technical Terms of Reference, which were developed at the Key Largo meeting in 2001 and adopted unanimously. The Terms outline the MCS Network's objectives and functions, organization, protocol for information exchange and information requirements.

An Executive Committee guides the Network in its growth and operations. The Executive Committee meets periodically and stays in touch through telephone, fax, mail and electronic communications.

The Network is intended to have an informal and operational level focus. It is not a substitute for formal government-to-government relations. It also does not confer any additional authorities on MCS organizations. However, it does allow more efficient use of existing powers and authorities.

It is intended to complement any existing regional cooperative networks or committees. The MCS Network provides a global mechanism for exchange of information where none has existed in the past.

WEB SITE

Much information is already carried on the web and publicly available. The Executive Committee determined the Network should have a website and where possible, include or link to useful information which is already publicly available.

The address for the MCS Network web site is: <http://www.imcsnet.org>. This address provides access to the "public" portion of the MCS Network web site. The website carries the name of the national contact for each member country as well as useful information about its laws, vessels, permitting requirements and more. General reference material is also located on the website regarding various topics and historical information about the Network itself.

Each member is responsible for working with the web site administrator to update its own submissions.

Though important, the website is not the major value of the Network; contacts and communications are. While electronic access is pervasive, it is not universal. INTERPOL, the international policing organization, has fewer than 50% of its members web-enabled. Just as in INTERPOL, this is not a barrier to membership or participation in the MCS Network.

LANGUAGE

The Website carries most documents in English and Spanish. To date, Executive Committee meetings have been conducted in English and Spanish. French language materials have also been considered.

CONTACT INFORMATION

To join the MCS Network, or request more information on activities and membership, you can use the application form located on the website, or you can contact the individuals listed below.

Alejandro Covarrubias
Chile, Executive Secretary
Calle Victoria 2832
Valparaiso, Chile
Tel: +32 819302
Fax: +32 819300

E-mail: acovarrubias@senapesca.cl

Michele Kuruc
U.S., Chair
8484 Georgia Avenue, Ste 400
Silver Spring, Maryland, USA 20910
Tel: +1 301 427 2202
Fax: +1 301 427 2211
E-mail: Michele.Kuruc@noaa.gov

This document contains the report of the Expert Consultation on Fishing Vessels Operating under Open Registries and their Impact on Illegal, Unreported and Unregulated Fishing that was held at the Southeast Fisheries Science Center, National Marine Fisheries Service, National Oceanic and Atmospheric Administration in Miami, Florida, United States of America, from 23 to 25 September 2003. The Expert Consultation was convened by the Director-General of FAO with a view to facilitating the implementation of the 2001 FAO International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU). Experts for this Consultation were selected because of their experience with open registries and in the field of fisheries.

The Experts focused on the effects of IUU fishing on global fishery resources and on lessons that might be learned from the experiences of flag States that have already implemented tighter control over the activities of their fishing vessels. Background papers and three case studies from selected open registry countries were presented. A round table discussion following the presentations led to the adoption of a number of recommendations for more effective application of flag State control over fishing vessels, particularly those operating under open registries, as a means to reduce the incidence of IUU fishing. These recommendations identified measures to be adopted by all States, flag States, coastal States and port States, as well as for assistance to developing States.

Results of the Expert Consultation are intended to provide inputs for a Technical Consultation on IUU fishing, fleet capacity and subsidies that is planned for June 2004, in accordance with a decision of the twenty-fifth session of the Committee on Fisheries (COFI) in February 2003.

ISBN 92-5-105098-8 ISSN 0429-9337



9 789251 050989

TR/M/Y5244E/1/03 04/1300